

Rights of the Child
in the context of tourism
————— a compilation

rights child
tourism


Equations
2008



Rights of the Child in the context of tourism

a compilation



The 2006 version of this publication was supported by UNIFEM through its Project "Promoting Collaboration in Responsibility in Tourism" and this 2008 dossier is a revised and updated version of 2006 dossier.

EQUATIONS-Equitable Tourism Options
#415,2C-Cross
4th Main,OMBR layout
Banaswadi
Bangalore-560043
Ph:+91-80-25457607/25457659
Fax:+91-80-25457665
Email:info@equitabletourism.org
Url:www.equitabletourism.org

Established in 1985 as a society under the
Karnataka Society Registration Act 1960.
Registered under Section 80-G and Section
12 A (a) of the Income Tax Act 1961.

We acknowledge with grateful thanks the contribution of various organizations and individuals for giving us permission for reproducing their articles for this dossier.

*You are welcome to use the information in this document with due acknowledgement.
For copies of this publication and other publications on impacts of tourism write to
info@equitabletourism.org*

Rights of the Child in the context of tourism

a compilation





contents

Section 1	Saying NO to Tourism that Exploits a Child	3
1.	Exploring Dimension of Responsibility in Tourism by EQUATONS, Feb 2007	6
2.	Huligamma and Big Mac by Nandana Reddy, Concern for Working Children	13
3.	Say No to Tourism that Exploits the Child: Trends and Issues on the Protection of Children in the context of Tourism in India by EQUATONS, March 2008	22
4.	Responsibility in Tourism : An Analysis of the Goa Children's Act by EQUATIONS, 2006	30
5.	The Goa Children's Act by Children's Rights in Goa	34
6.	Child Protection for Children in Goa by Anita Haladi, Goa State Commission for Children	39
7.	Tourism and Child Abuse: The Challenges to Media and Industry, International Federation of Journalists	44
Section 2	Child Labour and Tourism	51
8.	Hell in Hotels by Christine Pluss	52
9.	Rights Verses Obligations: Civil Society Responses to Child Labour and Child Abuse in the Service Industries by T.T. Sreekumar and V. Gayathri	61
10.	The Union Government Ban on Child Labour in Hospitality Sector- by EQUATONS and Civil Society Responses	81
a.	'Out of work and into school' - Proposed Action Plan to Combat Child labour, 15 Recommendations for Companies by India Committee of the Netherlands	90
b.	Banning Child Labour is Not Enough by Anita Haladi, Goa State Commission for Children	99
Section 3	Sexual Exploitation, Pornography and Trafficking of Children in Tourism	101
11.	Global Monitoring Report on the Status of Action against Commercial Sexual Exploitation of Children by ECPAT	102
12.	Child Pornography: An International Perspective by ECPAT International	105
13.	Caught in the Crime Net by R.K. Raghavan	121
14.	Tourism and Trafficking: An Extract from NHRC's Report on Trafficking	124
Section 4	Global Conventions and Guidelines to Protect the Rights of the Child in the Context of Tourism	131
15.	International Labour Organization (ILO)- Convention Number C138: Minimum Age Convention, 1973	132
16.	The United Nations Convention on the Rights of the Child (UNCRC, 1989), which India ratified in 1992	138

17.	Code of Conduct- End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes (ECPAT) - 1998	154
18.	International Labour Organization (ILO)- Convention Number 182: Worst Forms of Child Labour Convention, 1999	157
19.	United Nations World Tourism Organization (UNWTO) Global Code of Ethics for Tourism -1999	161
20.	Optional Protocol to the Convention on the Rights of the Child (CRC) on the sale of Children, Child Prostitution and Child Pornography - 2002	169
Section 5 Appendix		177
I.	The Notification issued by The Ministry of Labour and Employment, Government of India banning the child labour in the domestic and hospitality sector	178
II.	Detailed analysis of relevant sections of the Goa Children's Act in the context of tourism and the Responsibilities of various stakeholders	179

Across the globe, the development of tourism is raising serious questions as to who its real beneficiaries are. Tourism continues to be promoted vigorously in the developing world as a potent economic force (the World Tourism Organization puts tourism's contribution to global GDP at an estimated US \$ 514 billion) although its corporate and market-oriented structure have brought meager gains to local economies. Tourism continues to develop at the cost of precious natural resources and biological diversity by making in-roads into fragile and vulnerable ecosystems. With its current commercial focus, tourism has failed to protect the rights of marginalised sections of society like women, children and indigenous communities.

Being a tourist is easy and fun, but tourism is complex! Around the world, tourism destinations are facing increasing pressure on their natural, cultural and socio-economic, environments. Uncontrolled tourism growth, often based on short-term priorities, invariably results in unacceptable impacts that harm society and the environment. However tourism policies focus more on the growth and promotion of tourism and hardly ever acknowledge the negative fallouts of tourism development.

Tourism development is highly unregulated and not monitored for its negative impacts. The mitigation of these negative impacts therefore is also not on the agenda. A little known and even less acknowledged impact is that on children. Tourism development without responsibility, accountability and protective measures has led to sexual exploitation of children, trafficking, pornography and increase in child labour. Increased vulnerability to drugs, crime and alienation from communities and families are related problems.

People are central to tourism but the "visited" deserve no less, and in fact more attention, than the tourist. Responsible tourism is not only about providing better holiday experiences for guests and concessions for tourism enterprises. That a tourism "destination" is also somebody's home, and that the tourist's "experience" is about somebody's life livelihood and culture is often forgotten. Responsible tourism ought to be about prioritising local community's quality of life, through increased socio-economic benefits and improved environment, including their ability to say no to tourism!

In this section we have put together papers which give a broad framework of themes that could constitute a possible definition or understanding of responsible tourism drawn from an understanding of the impacts of tourism (positive and negative) and efforts from around the world towards responsible tourism. One of the papers included in this section "Tourism and Child Abuse: The Challenges to Media and Industry" written in 2000 is a sad reminder that in the past years very little has changed in terms of action to



Saying NO to tourism that Exploits a Child

protect children in the context of tourism

EQUATIONS calls for responsibility in tourism that goes beyond voluntary codes of conduct and holds governments, tourism promoters and industry accountable for ensuring that tourism is just, non-exploitative and equitable.

Exploring Dimensions of Responsibility in Tourism

EQUATIONS¹

In India, like in many other parts of the developing world, tourism is viewed and promoted as a 'development paradigm' and a sustainable growth option. Tourism has the potential to provide employment, cultivate tolerance and encourage knowledge of different cultures, while aiding in the preservation of heritage and the environment. However along with the growth in tourism, concerns about the adverse impacts of tourism are also growing. Current models and forms of tourism also leave serious questions about the extent to which local communities² actually benefit from this growth.

Although tourism statistics show that a large amount of revenue is brought into the region, factors like the rate of leakage of tourism receipts and to what extent the local economy is able to retain revenues generated by tourism is still not clear. Analyzing these would help establish baseline data on the local linkages, and set a measurable road map to increase local benefits. Tourism destinations are facing increasing pressures on their natural, cultural and socio-economic environments. Uncontrolled and unregulated tourism growth, often based on short-term priorities, invariably results in adverse impacts that negate the positive potential of tourism. There is also being felt the need to provide communities with the space and platform to voice opinions on their positive and negative experiences in tourism.

In this context, there is the need and the potential of increasing responsibility in tourism. Parameters of responsibility in tourism need to address tourism holistically keeping in mind its economic, environmental, social and cultural aspects and strengthening institutions, processes and policy to maximize benefit and minimize adverse impacts.

There is no standard pre-determined definition of responsible tourism except guidelines, practices and cases that reflect how tourism can be developed in a more democratic, wholesome and non-exploitative manner that is meaningful both for local communities and tourists. While talking about the framework for responsibility in tourism, there is a need to closely assess the impacts of tourism. This would contextualise tourism to ground realities thereby helping understand how responsible practices will strengthen the positive, mitigate the negative and establish institutions and policies that work towards this. Alongside impacts, it is equally important to acknowledge initiatives taken by different players to work towards responsibility even within their roles and spaces. They include industry initiatives to conserve resources and preserve the environment, community initiatives to lead the way in local tourism, government initiatives in providing a policy framework that infuses more responsible efforts and civil society efforts in highlighting impacts that intensify the need for greater responsibility. However, understanding responsibility in tourism and developing parameters for its measurement require wide stakeholder participation. This is because all parties have a stake in responsible tourism and have contributions to make to the process of increasing responsibility in tourism.

¹A version of this paper was presented at "Better Together: Workshop on Responsible Tourism" organized by Department of Tourism, Government of Kerala 2nd & 3rd February 2007, Thiruvananthapuram. This paper puts down a broad framework of themes that could constitute a possible definition or understanding of responsible tourism. It draws from an understanding of the impacts of tourism (positive and negative) and efforts from around the world towards responsible tourism.

²It is critical to note that the term 'local community' is not a homogenous entity but extremely heterogeneous and diversified. It includes people of different economic strata, origins, ethnicity and caste. So, when we hope that tourism brings benefits to the 'local community' it requires a closer scrutiny and sharper definition of local. Oftentimes, it is the local elite who reap the economic benefits of tourism which might technically constitute 'local community' but without making a difference to the poorest sections within the local community.

This paper puts down a broad framework of themes that could constitute a possible definition or understanding of responsible tourism. It draws from an understanding of the impacts of tourism (positive and negative) and efforts from around the world towards responsible tourism.

Economic Responsibility

Proponents of tourism argue that the main economic reasons to support tourism development are its ability to generate high income and employment benefits for the local economy through its multiplier effects. Yet other less favourable effects such as inflation, leakages and dependency often accompany these positive effects. These need to be weighted carefully, based on accurate assessments of the actual economic effects. Too often, multiplier effects are overestimated, leakages misjudged and cost for infrastructural developments and induced leakages through demonstration effects are not considered. Research and trends have shown that in its current form, neither of these objectives has been achieved to a satisfactory degree in India.

Increasing the percentage of tourism revenues retained within the local economy

The economic rationale behind encouraging tourism is that through its linkages with other sectors of economy, revenues generated can increase the economic prosperity of the local people. This argument would not hold if revenue generated from tourism were not retained within the local economy but were instead leaked out through repatriation or other means thereby nullifying the potential gains to the local economy. For example if a hotel is owned by an investor from outside, the percentage of benefits derived by locals from tourism will never be as high as the investors. The same will be the case if the hotel imports consumables thinking that there is demand for them or that their quality would be superior. If the hotel prefers imported varieties of cheese instead of locally available products from Co-Operative Milk Marketing Federations Limited, or even if tiles are sourced from a “reputed” company, instead of using a more locally produced traditional tile, it amounts to a leakage.

Evaluating dependency of the local economy on tourism

Looking at the tourism statistics, it can be said with considerable certainty that tourism is one of the major sources of income and employment for locals. However, tourism itself is seasonal and highly vulnerable to external and internal impacts. These could include, disasters (tsunami, earthquake) health epidemics (SARS, chikungunya), political tensions (riots and terror threats) and other factors in tourist source regions (inflation, airline strikes). “In October 2006, about 30 to 35 per cent cancellations had taken place every day after the spread of the news about chikungunya among foreign travellers in the houseboat sector. Similar setback was felt by the resorts in the backwater regions of Alappuzha and Kumarakom”. In such circumstances, it is the local people who are the first affected either by a loss of employment or steep income reductions. Given this it becomes important for governments to regulate the dependency of local livelihoods and income on tourism. In that case, the state government must concentrate its efforts towards diversifying the local economy base and strengthen linkages with other primary sources of income like fisheries, agriculture and local handicrafts. A possible way of doing this could be to tap the existing linkages with the agricultural sector by sourcing raw materials for tourism from it. Long-term sustainability of local economies requires diversity, which might not be assured if the dependence on one vulnerable sector is so high.

Supporting small, medium enterprises (SMEs) and informal sector initiatives in tourism

In order to allow tourism to benefit and sustain the local economy, mechanisms must be developed to encourage and support small and medium enterprises that require low levels of investment but provide high level employment to the local labour force. This would help assess the extent of local participation in the tourism industry, the benefits that the local industry derives from it and how sustainable tourism is for the local economy. A very cursory

glance at the scenario in most tourism destinations points to the trend that the SMEs (homestays, handicrafts) and the informal (*small eateries, shacks*, tender coconut vendors) sectors which procure goods locally, provide jobs and are even owned by the local community (when compared to big enterprises) account significantly in tourism. They are also more price-competitive. Often they need financial and technical support, which requires equal government attention.

Avoiding enclavisation in tourism

Enclavisation in the context of tourism refers to the process of converting tourism destinations into enclaves – exclusive islands where mass and niche tourism can flourish thereby detaching them from local environment, culture and economy. The process of enclavisation in tourism has been a result of the need for exclusivity of the product and dependability of the income. However, enclave models (like “All-Inclusives”, “Resort Islands”, “Special Tourism Areas/Zones”) that signify high concentration of tourism activities in a closed geographic space often result in little benefit to the local economy. Furthermore, there is lesser social interaction and sometimes greater environmental impact due to the intensity of development.

Monitoring price rise in tourism areas

Inflation is a constant economic issue, especially in developing countries with fluctuating monetary regimes. In several areas, it is noticed that in the peak tourist season, there is a sudden and steep rise in prices of all commodities. While it is understandable as to why luxury items will be priced higher (i.e. to take advantage of the high demand), the rise in price of basic commodities impacts local communities severely. It becomes a strain on household budgets especially when it is not matched by a consistent increase in income either from tourism itself or other sectors. In many destinations, promotion of high-end tourism and steep increases in the price of the tourist product itself means that only a niche international and domestic clientele can afford it. It thus makes tourism inaccessible to a large section of domestic and backpacker tourists and reduces the benefit that the local community can get from these kinds of tourists.

Strengthening local ownership of tourism

Many a time investment in tourism activities comes from outsiders which tilts the ownership of the industry itself away from the local community. In such cases local people become beneficiaries dependent on such investment, rather than the owners of the industry. The question of ownership is linked to communities' bargaining power in the industry, range of jobs they have access to, adherence to state labour standards and norms and ensuring the long-term sustainability of the economy itself. Also the possibility of displacement of communities and denial of access rights to natural resources like water and forests is lesser if ownership is in local hands. Taking the example of Kumarakom, locals have been denied jobs by the tourism industry in fear of forming labour unions within the organization. Big groups go for centralized tenders for car rentals and coaches denying the local ancillary industry benefit from tourism.

Social Responsibility

Article 5 of the WTO Global Code of Ethics states that the local population should be associated with tourism activities and share equitably in the economic, social and cultural benefits they generate, benefit from the direct and indirect jobs created by it and tourism policies should be oriented towards improving their standard of living. The need to stress the role that the local communities play in tourism destinations arise from the variety of ways in which tourism affects the lives and livelihoods of host communities.

Sensitising tourists to local culture, social norms and customs

Tourism is an excellent opportunity to learn about other societies, their culture, traditions and lifestyles - when communities welcome tourists into their regions/homes.

But often time, the line between being welcomed as a tourist and intruding as a tourist is blurred. It is important for tourists to understand their limits and this can come with greater sensitization of local norms and customs. Along with this comes the understanding that local communities are not just 'host communities' but local residents who have an identity and own the space that is visited. This highlights the need to regulate tourist behaviour when such norms are violated an aspect which is often ignored in the predominance given to tourist security.

Ensuring that tourism does not intensify existing social tensions, inequities and imbalances

All communities and social spaces have internal hierarchies and imbalances of their own. These could be due to caste, class, ethnicity and origin. When tourism is developed, it must ensure that such tensions are bridged and not intensified. This could be achieved by providing opportunities to under-privileged sections of society and help build their capacities to benefit from tourism.

Strengthening social infrastructure

Tourism can make a significant differences to lives of local communities if it helps build social infrastructure like health, basic water, electricity and education. Most state tourism policies emphasise the importance of physical infrastructure like roads, bridges, airports, helipads, jetties that tourism requires but seldom address needs of social infrastructure. These facilities will benefit both local communities and tourists but for the former it will mean an improvement in standard of living and building capacity for generations. Along with this, even in physical infrastructure, the focus should not be on six-lane highways and airports alone but on building those roads that improve connectivity to local initiatives and markets.

Minimising adverse impacts of tourism on indigenous communities

Tourism many a time intrudes into regions inhabited by indigenous peoples or *adivasis* for centuries especially forest areas. When such areas are opened for tourism especially ecotourism, it utilizes resources like land, water and forests over which indigenous people have customary rights. Indigenous people by virtue of being native inhabitants of these regions are the first and deeply impacted by adverse environmental and social impacts of tourism. In many areas these take the form of denial of access to community water resources, forest produce, take-over of land (as in such places land rights are not clearly defined as the custom is of community ownership). This finally results in conflict between the local community and tourism industry on the issue of access to basic resources and community rights. The change in demographic patterns that come in from tourism including high tourist numbers, settler population from surrounding areas and floating population put huge pressures on the basic resources. The possibility of adverse cultural impacts is also higher with indigenous communities given their unique traditions, identity and customs.

Minimising exploitation and strengthening the decision-making role of women in tourism

Tourism impacts women in diverse ways and is reflective of the larger economic, social, political and cultural roles played by them in the society. Prostitution, misrepresentation, trafficking and sex tourism are some of the directly visible forms of exploitation of women in tourism. A gender bias also persists in the industry with regard to women employees in service provision either through wage discrimination or the type of job they have access to relative to men. Women are also more impacted than men by the adverse socio-cultural impacts of tourism and denial of access to basic resources to run households.

Improving the role of women in decision-making in tourism can help strengthen their role in society and mitigate adverse impacts better. Supporting women's entrepreneurship

especially in SME and cottage industries in tourism and ancillary activities can greatly improve the economic benefit they derive.

Eliminating exploitation of children in tourism

The government of India has recently banned child labour in tourism and related activities. Although there are social ramifications of such a measure, it cannot be denied that there is high use of child labour in tourism - especially in the restaurant sector. But unlike other industries, tourism additionally exposes increases the vulnerability of children employed in service position to physical and sexual abuse. Child abuse in the tourism industry can include sexual and non-sexual abuse. The former is visible through the growing problem of child prostitution in popular tourist destinations that is aggravated by the rampant trafficking of children across the globe. The study "Trafficking in Women and Children in India", conducted by the National Human Rights Commission published in January 2006 states that the beaches of Goa and Kovalam are increasingly becoming the main destinations for those seeking child prostitutes³. All stakeholders government, industry and civil society must actively work to end tourism being a source of child exploitation. On the issue of child labour, while the ban is a welcome move, understanding and working with the root causes of child labour, considering how the ban could be implemented without further exploiting the child and setting of up supplementary support structure for working children need to be addressed.

Cultural Responsibility

The impacts of culture can be both positive - through fostering an exchange of cultures and cultural enhancement or negative through commodification of culture, deterioration in traditional systems and loss of cultural identity. The nature of tourism is that it gives the tourist the opportunity to be transported into an alien socio-cultural ambience and a chance to appreciate the unique cultural, traditional lifestyles and tangible and intangible cultural heritage of the region. The WTO Global Code of Ethics has recognized that cultural resources used by tourists belong to the entire mankind but that community in whose territories they are situated have particular rights and obligations, that governments and industry must endeavor to protect and preserve tangible heritage and that tourism must allow cultures to flourish rather than get standardized and die out.

Broadening our understanding of local 'culture'

Culture is an experience, not a product. Local culture comprises more than just costumes and dancing it includes food, architectural style, language, local arts and handicrafts and all else that constitutes a way of life. At times, tourism provides an opportunity to revive dying arts, crafts and art forms but it also runs the risk of infusing commercialisation, standardisation, adaptation of tourist demands and monotony into such aspects of local culture. When the artist becomes the artisan, something is wrong in the way culture and tourism interact. Tourism must be an opportunity to instill pride within communities on the richness and diversity of their culture it must never become a medium to exhibit or showcase culture. This calls of sensitivity in what tourism promotes, how tourists behave and how the destination is portrayed. Tourism, if promoted sensitively, can also help bring back old-world charms of community cultural activities.

Environmental Responsibility

Minimising tourism's impact on biological diversity

Biological diversity is an important attraction of the tourism product of any region so much so that some economies solely depend on it for their sustenance. Biodiversity is an integral part of every ecosystem and plays a key role in maintaining the ecological balance and environment sustainability of the region. Therefore if not conducted in a sustainable

³CRZ rules: State govt sitting tight, newindpress.com 22.10. 2005.

manner, tourism can cause irreversible damage through species depletion and ecological degradation. This is especially true in cases of wildlife tourism, ecotourism and safaris where biodiversity is the main product. Efforts should be to regulate tourist numbers and nature of activities in such biodiversity-rich areas.

Avoiding over-exploitation of natural resources

Tourism enterprises like most others do need to utilize resources like land, water and energy. But there is a need to avoid wastage and over-utilisation of resources. The Convention on Biological Diversity (CBD) has recognized that tourism must be undertaken keeping in mind the land use patterns of the local community and respecting their traditional rights over natural resources in the region. We have very often seen that the booming tourism escalates land prices to an extent where investors and developers are ready to offer any price for agricultural and forest lands. While this might be a golden egg for the farmer, such a rush in land sale and change in use will dramatically alter the ecology and climate of the region. These are factors that need to be borne in mind to ensure that the ecological balance and attractiveness of the region are secure. Similarly, in the case of water, tourism puts additional demand on scarce water resources in the region and if not used judiciously, can even lead to water scarcity. In such circumstances, it is the local communities who do not have access to water for drinking and basic chores while tourists lounge in pools. Tourism needs to be carefully planned to ensure that the industry's water demand can be met (not just for the present for future as well) without jeopardizing availability of water at an affordable rate to the local community. This could include avoiding golf courses and luxury requirements like pools, jacuzzis, sprawling gardens and golf courses in water-scarce areas.

Reducing pollution and improving waste disposal mechanisms

Pollution and waste generated out of tourism is of major challenge to the perception that tourism is an environmentally benign and smokeless industry. The growth of tourism industry without proper regulation has resulted in the deterioration of water bodies like lakes, ponds and backwaters; improper disposal of sewage, wastewater, solid wastes, and increased noise levels. The proliferation of plastic that accompanies tourism is a classic pollution syndrome that most tourism areas suffer from. Sewage from hotels let out into rivers, problems with solid waste disposal and plastic are all too common problems in tourism destinations. In addition to this there is aesthetic pollution caused by building structures that do not fit into the local architectural style.

Developing tourism within the carrying capacity limits of the region

We have often seen that due to unregulated tourism, the environment bears the brunt of heavy tourist traffic and use of natural resources often beyond its carrying capacity. Sometimes tourism - induced construction impedes the natural movement of water and encroached by landfilling to mitigate the additional pressure. Estuaries and backwaters have been reclaimed and mangroves have been cut to build resorts or other tourism establishments. Many of these happen in blatant violation of zonal regulations like the CRZ with further demands for dilution of environmental laws pertaining to tourism. As tourism has the tendency to expand and spread fast in a short duration, prior planning of carrying capacity limits for the present and foreseeable future needs to be done.

Strengthening the Institutional framework for supporting responsibility in tourism

Strengthening local community involvement and decision-making in tourism

In most destinations, tourism follows a top-down development model where plans and policies are made externally and implemented with little local discussion and scrutiny. The voice of local communities their interests, apprehensions and aspirations is important to acknowledge in the course of tourism development. Tourism development must respect the rights of communities to say no to tourism that they do not want. Mainstreaming community

participation would mean not just seeking their support in implementing tourism projects but also ascertaining their views and opinions at the project planning and policy-making stage. Such an approach helps integrate communities into tourism, can help forecast and mitigate adverse local impacts and give community the time and opportunity to benefit meaningfully from tourism. Such an institutional space must be created by the government in its governance process and respected by the industry. Support and encouragement should also be given to communities who wish to chart their own course in tourism.

One important method of ensuring community involvement in tourism is by strengthening the role of local self-governing bodies in tourism areas (including Panchayati Raj Institutions). The 73rd and 74th Amendments to the Indian Constitution are a statutory recognition of the principle of participatory democracy by facilitating the creation, functioning and empowerment of local governing institutions in rural India through *panchayats* and in Urban India through Municipalities and other urban local bodies. With respect to tourism alone, it has been observed that a majority of tourism's requirements rely on the 29 subjects vested with the Panchayati Raj Institutions. It is important to note that in Kerala all 29 of the subjects have been given to PRIs so as to prepare and implement plans. The panchayats are empowered to safeguard and preserve the traditions, customs and cultural identity of the people, community resources and settle local disputes. But there are several instances where tourism activities have been carried on without the consent of local bodies. There have been moves by the state government to usurp powers of the local governments through new legislation as in the case of Kerala Local Authorities Entertainments Tax (Amendment Bill) 2005. With the Bill, the government may by notification in the Gazette, constitute a Committee for the purpose of categorisation of the amusement parks, ensuring the safety of parks and advise the government for review of the tax structure every three years. The committee does not have any representation from the Panchayat in which the amusement park is located and has taken away their powers to levy tax and ensure safety measures.

Respecting domestic policy and regulatory framework

Tourism has close interlinkages with other sectors of the economy, which makes regulation a challenging task. But it is true that relative to other industries, tourism is the least regulated both at the national and state levels. It needs to be understood and acknowledged that responsibility in tourism goes hand-in-hand with regulation of tourism. For instance, the regulations at the state and central levels like the Wildlife Protection Act, Forest Conservation Act, Coastal Regulation Zone notification, Forest Rights Act and regulatory framework for social aspects like child prostitution, sexual exploitation and child labour are to be taken into account in the context of responsibility in tourism. The government needs to oversee implementation of these regulations and also support new regulations that might be put in place by local bodies in the effort to increase responsibility.

At the same time, it is important to note the implications of international agreements like the World Trade Organisation's services agreement (that includes tourism) that might constrain the power of sub-national governments to regulate tourism. This is particularly important in the case of regulations put in place for achieving environmental and social objectives that could be overridden by a trade argument.

Several international bodies that are directly and indirectly involved on tourism issues have developed codes and guidelines linked to responsibility aspects. These include the World Tourism Organisation's Global Code of Ethics in Tourism, the Commission on Biological Diversity's Guidelines on Tourism, the UNESCO's charter, the International Cultural Tourism Charter developed by the International Council on Monuments and Sites (ICOMOS) and industry initiatives by the WTTC like its Blue Print for New Tourism. These could serve as a useful reference for exploring aspects of responsibility in tourism.

Huligamma and Big Mac

Nandana Reddy¹

Amid the cacophony of blaring horns, the smog emitted from the exhausts of hundreds of vehicles and a hoarding screaming the advantages of the new wave of globalisation, little Huligamma dodges through traffic at a major intersection in one of India's teeming cities.

Nothing much has changed for Huligamma. She has worked for as long as she can remember. Now aged 11, she dare not dream and, on the rare occasion when she does, her dream is not an extravagant one: just to become a teacher some day. But even this dream seems to be becoming more and more elusive.

Yet, actually, things have changed. When she first came to the city from her village and began rag-picking, she used to sort through the piles of garbage in mute companionship with cows. She would collect the paper, tins, magazines and cloth while the cow munched on the banana leaves and scraps of food. She sold these to wholesalers who, in turn, recycled the waste material and made a few rupees from the trade. Now much of what she finds in the garbage heaps are Styrofoam cups, bubble wrap, plastic containers and discarded mouses, keyboards and CDs. And there is very little resale value for these.

In August 2005 there was an interesting battle in Chennai, India, between Coca Cola and the photographer, Sharad Haksar. He has been using a billboard for three years to focus on social issues affecting India through photographs. The one displayed in August 2005 showed a line of empty water pots waiting to be filled at a hand pump with a Coca Cola logo in the background. It was a commentary on the water shortages that the country was experiencing. Coca Cola India sent a copyright infringement notice to Haksar. He responded by saying that he had not infringed any law and was only exercising his freedom of expression.

Activists have been claiming that water shortages due to depleting ground water usually accompany the arrival of a Coca Cola or Pepsi bottling factory in the area. These allegations have been vociferously denied by the companies and now, a year later, many institutions and even states have banned these colas, claiming that the level of pesticides found in the soft drinks are far above the permissible limits.

Huligamma extracts a half eaten big Mac from the dustbin outside McDonald's. She munches on it as she gazes at a hoarding advertising 'Power Lunches' for busy executives at a five star hotel. A steaming plate of food stares back at her as she chews on the dry bread. So different from the occasional packet of curd rice or chapatti and subzi that she used to find. This dry and tasteless meat sandwiched between white flavourless bread is difficult to swallow and will barely satisfy her hunger.

Although economists promoting liberalisation and 'free trade' suggest that trade improves living standards, this is a controversial proposition that is widely debated in developmental circles. Experience has shown that trade does not necessarily promote economic growth. Even if trade boosts the economy, the benefits either do not trickle down to most citizens or are offset by the attendant costs. These potential costs could include environmental degradation, increased exposure to disease, decreased public spending due to lower ability to tax capital, increased exposure to international financial crises, increased demand for low-skill labour, including child labour, and subsequent reduced returns to human capital acquisition.

¹ Nandana Reddy is the Director Development with The Concerned for Working Children. This was published in "Info change India e-magazine" 2006: <http://www.infochangeindia.org/sitemap.jsp>

Back in her village, Huligamma's 13-year-old sister spends 12 hours a day spraying fertiliser on crops. She works as a daily wage labourer in the farms of a multinational agro corporation that has a chain of stores selling vegetables, fruit and other agricultural products. She is paid Rs. 15 per day, from which the contractor takes a cut.

Her brother, aged 14 years, works as an unskilled labourer in the iron ore mines, digging for ore and loading trucks. It is back-breaking work in very extreme conditions. The temperature is 45 degrees in the summer, there is no water in that drought-prone region and the ore dust causes chronic respiratory ailments. He is paid Rs. 30 per day and he, too, has to give his contractor a cut. But together the brother and sister are able to feed themselves and their grandmother, and even to put a little money aside for the days when there is no work.

It is often asked whether a country's openness to the international economy affects investments in children's health and education. This question goes to the core of the debate on globalisation. Child health and education are important ends in their own right (Sen 1999). Health and education are two of the important means of achieving long-term economic sustainability. Experience has shown that trade is unlikely to be a long-lasting propeller of overall development, especially if it only spurs economic growth but substantially harms health and education through reduced public spending and the removal of safety nets. Trade also influences the degree to which governments are willing and able to fund public health and education. More generally, in open economies governments have a hard time taxing capital; in fact, they may end up largely subsidising capital at the expense of investments in children.

To draw from economist Adam Smith, policies such as Structural Adjustment have contributed to "the greatest peacetime transfer of wealth from the periphery to the imperial centre in history." And this has been achieved without much media or public attention.

The prescriptions of the International Monetary Fund and the World Bank to developing nations at the behest of the rich and powerful countries is that the former should open up to allow more imports as well as to export more of their commodities. This is precisely what contributes to poverty and dependency.

Mainstream economists and politicians have long been criticised for concentrating on economic growth in ways that ignore the human and environmental costs of such growth. Perhaps one of the harshest ironies is how food and farm products flow from areas of hunger and need to areas where money and demand is concentrated. Farm workers - women especially - are among the hungriest people in the world.

Although Huligamma's family was not considered poor, they were small farmers; education beyond the 4th standard was never an option for the young girl and her siblings. At the age of 10, living in a drought-prone area, Huligamma had to walk 6 kms. every day to collect two pots of drinking water for the family. Her brother and sister would take the goats in search of grazing land. As pastures are scarce in this district, it would be several days before they returned only to pack another bundle of dry rotis and set out again. Her mother and father worked in the fields.

After four years of continuous drought, her family could no longer service their debt and her father committed suicide. Huligamma left her village with her mother and two younger siblings and came to the city to find a way to survive. They left behind her old grandmother, elder sister and brother to manage the little land they had left.

UNICEF's 1999 Progress of Nations report by suggested that debt was killing children. It stated that as countries were diverting resources away from social provisions to repay debt,

those most affected were the poor, especially women and children. UNICEF's 2000 report on the State of the World's Children claimed that in 1960 the income gap between the richest one-fifth of the world's population and the poorest was 30:1. By 1997 it had become 74:1.

"Trade, not aid" is regarded as an important statement of the kind of development promoted by some nations. But, in the context of international obligations, it is also criticised by many as an excuse for rich countries to cut back on levels of aid that have been agreed upon and pledged at the United Nations.

A coalition of Indian organisations, spearheaded by a Delhi based organisation, HAQ-Centre for Child Rights, is campaigning for trade justice - not free trade - with the rules weighted to benefit poor people and the environment. They are "calling on world leaders to change the rules that govern international trade so that poor countries have the freedom to help and support their vulnerable farmers and industries."

The HAQ report claims that although the direct impact of free trade on children may not be apparent, the experiences of other countries with the processes of globalisation and liberalisation definitely indicate that there is a strong case for closely examining of the possible linkages.

Huligamma remembers how, some years ago, her father, along with other farmers, had dumped their tomatoes on the highway because the selling price had dropped to 90 paise per kilogram. Her father was a proud man who did not believe in taking handouts from anybody. He would save money before each festival to buy clothes and rations. What a joy that was, to dress up and go with the family to the sante (weekly market) and choose the fresh fruit and vegetables that would go into making the festive meal and sweets. And buy flowers and bangles and new clothes! What different days those were.

Huligamma also remembers how her father was told about the new economy. 'Buy now and pay later.' He finally fell into the trap and took a loan, not knowing that agriculture was not a sustainable occupation any more. She thinks of the new TVs and cars and scooters that are displayed outside factories offering fantastic schemes. A car for a down payment of just Rs. 999! She wonders how sustainable these city jobs are.

In its report on the State of the World's Children 2006, titled 'The Excluded and Invisible,' UNICEF makes a passionate plea for nation states to focus on "Creating a world fit for children." According to the report, such a world "may seem impossibly far away, but achieving it is as simple as this: We must do everything in our power to keep our commitments to children. These commitments are clear and unambiguous. What is now required is the understanding that a commitment is a pledge with both moral and practical obligations. In a moral sense, a commitment signifies a relationship of duty. In practical terms, a commitment binds those making it to a course of action."

It appears that the UNICEF report is trying to desperately counter the effects of corporate globalisation and, without stating as much, the authors make an emotional plea playing on the sense of humanity and values that they assume nations still retain at some level.

According to the report, "At the extremes, children can become invisible, in effect disappearing from view within their families, communities and societies and to governments, donors, civil society, the media, the private sector and even other children. For millions of children, the main cause of their invisibility is violations of their right to protection."

For example, child labour is banned in India, at least in certain sectors of work deemed particularly hazardous to them, and children are periodically rounded up and removed from

their work situations. However, the alternatives offered to them are neither viable nor sustainable. The most detrimental aspect of this “rescue” strategy is that it pays little attention to rehabilitation. Children working in the banned sectors are afforded no protection whatsoever and are, in fact, themselves considered infringers of the law. This criminalisation of child labour has forced working children into more and more hidden forms of work which render them even more invisible than before.

In November 2005 The Daily Pioneer² in New Delhi reported a drive against child labour in which over 500 minors working in inhuman conditions with 50 embroidery units in East Delhi were rescued through simultaneous raids on several establishments.

The next day the same paper published an investigative report³ on the same issue. This is how the report described the intervention: “children rescued from a cage and incarcerated in a pigeonhole.” According to the report, the “477 children who were rescued ... amid much publicity... (are) now faced (with) an even more uncertain future. (I)nvestigations by The Pioneer revealed that, rather than concern for the rehabilitation of the children, utilisation of funds under an UN-funded scheme prompted the raids. Neither the Government, nor the NGO which carried out the operation, has an answer about their future. This would mean sending the children back to the same homes they had fled to escape hunger and disease.

“It was revealed that the raids were carried out to facilitate utilisation of funds received by the Labour Department from the International Labour Organisation, a UN body, for carrying out programmes to eradicate child labour. Sources in the Delhi Government said that such raids are planned with a lot of media hype and positive media reports are submitted to ILO to embellish the application for the release of more funds.”

A Delhi Government official was quoted saying, “There is no provision for rehabilitation of children rescued under the Child Labour Act. The NGO's and the Delhi Government's claim that they would help rehabilitate children is hogwash. The Labour Department has coordinated (a politically correct usage for contract) with the NGO only to the extent of rescuing and deporting these children from Delhi.”

The cooption of NGOs to do Government work or act as extensions is an integral part of the liberalisation process. The fate of the few independent NGOs who have managed to retain a sense of political activism despite the growing influence of neo-liberal policies is well summed up by Dom Helda Camara - one of the South American apostles of Liberation Theology: “When I give food to the poor, they call me a saint. When I ask why the poor have no food, they call me a communist.”

According to the UNICEF report, “Statistical analyses of key MDG indicators related to child health and education show a widening gap between children growing up in countries with the lowest level of development ... and their peers in the rest of the developing world. These factors not only jeopardise these children's chances of benefiting from the Millennium agenda, they also increase the risk that they will miss out on their childhood and face continued exclusion in adulthood.”

According to the latest statistics in the UNICEF report⁴, enrolment figures for primary school in India are 111 per cent for boys and 104 per cent girls. However, the secondary school enrolment figures drop dramatically to 58 per cent for boys and 47 for girls. Of the children who enrol in secondary school attendance is only 45 per cent and 36 per cent for

²The Daily Pioneer, Staff Reporter / New Delhi Wednesday, Nov 23, 2005 - 500 Child Labourers Rescued In Raids

³The Daily Pioneer, Sidharth Mishra / Rajesh Kumar / New Delhi Wednesday, Nov 24, 2005 Lure of UN funds drives NGO to 'rescue' kids - PIONEER INVESTIGATION

⁴The State of the World's Children, 2006, UNICEF

boys and girls respectively. This indicates that more than half of India's young people between the ages of 14 and 18 are not in schools and, presumably, must be engaged in some form of economic activity. Under-educated, unskilled and, therefore, underpaid, these young people will join the ranks of frustrated, under-employed, excluded adult population.

There has been a lowering of standards in education, basic health, nutrition and shelter in India as a result of reduced public expenditure in the social sector. The policies, programmes and development initiatives framed by the Government of India, based on the dictates of the World Bank and the Asian Development Bank (ADB) increasingly deprive communities and families of resources on which they have traditionally depended. Loss of access to and control over land and forest resources, fuel, fodder and water; privatisation of social services such as education, healthcare and basic needs such as water supply are clearly taking their toll on millions of children.

The symptoms of this negative fallout are visible. Children from families denied any livelihood security, deprived of the most basic social benefits, are forced to migrate to urban centres in the hope of finding a means for survival. We have seen a dramatic increase in the numbers of street children - both girls and boys - in cities and towns, more and more children are being trafficked within and across borders, and there are mounting numbers of children engaged in part or full-time labour.

Children are practically half the world's population; in many poor countries children constitute more than 50 per cent of the population. Therefore, what happens to children affects all of humanity.

While Huligamma picks rags and occasionally begs, her younger siblings - six-year-old brother and eight-year-old sister - jump through loops and perform somersaults to amuse the bored multinational company executives as they wait in their air-conditioned cars at the traffic lights. Their tiny bodies have been trained at an early age to do these tricks; when they are older they will have to graduate to rag - picking and begging like Huligamma.

Their mother works as a daily labourer when she can get work on a construction site. She is pregnant and doesn't know who the father is. She has been violated so often that she has lost track. This is a 'service' she performs for the beat policemen in return for their ignoring her presence on the street. She bears this torment with gritted teeth.

The recent ILO Global Report, "An end to Child Labour Within Reach," which was released on 4 May 2006, makes tall claims and sweeping statements. Since there is no one who would not welcome an end to the tragic reality and consequences of child labour, one hopes that there is some truth in its content. However, many of the claims remain on the boundary between rhetoric and wishful thinking.

According to the report, child labour has been reduced globally by 11 per cent. Statistics in this area have always been doubtful and dubious. On the ILO sites providing data on child labour there is a lengthy and complicated document titled, 'Statistical Information and Monitoring Programme on Child Labour [SIMPOC]' (last updated on March 2006). The statistics that this document contains are all referred to as estimates and, although the methodology used to arrive at these figures is elaborate and detailed, in the latest update many countries that are said to have high populations of child labour, such as India, do not even find a mention.

Giving the ILO the benefit of the doubt, the 11 per cent reduction claim is impressive. However, reading carefully between the lines reveals that this claim is only applicable to children working in the most intolerable⁵ forms of child labour. This would mean, for example, that for every 1000 children working as child prostitutes in Thailand, now there are only 890. The 110 who got away are certainly fortunate, although one wonders where they are now and how they are faring. Or have they just grown up and crossed the age of 18, to be now counted as adult prostitutes? If this is the kind of progress that can be shown by the ILO in the decade since Convention 182⁶ has been in force when will the 'end be within reach' for the remaining 8900 child prostitutes and how?

It is unfortunate that the ILO, the last surviving body to be formed as a result of the Versailles Treaty, has gone the way of other UN agencies. As the doctrine of 'free trade' increased in momentum, most UN agencies have been slowly and surely dismantled and rendered increasingly powerless.

With the setting up of the IPEC or International Programme for the Elimination of Child Labour launched in 1992, the ILO - which was thus far a regulatory body and a protector of workers' rights - became an implementing agency as well. This programme is largely funded by the USA and, therefore, controlled and directed by them to serve their trade agendas. The IPEC is also the only growth area within the ILO in fact, the programme keeps the organisation afloat while all other sections of the ILO have been reduced to mere tokenism.

The ILO was set up to be a tripartite body consisting of representatives of governments, workers and employers. However, when it came to discussions on child labour, the ILO refused to recognise the right of working children to represent themselves; and this was not from want of trying on the part of working children's movements across the world.

Instead, the ILO chose to recognise some select, privileged First World children to be their ambassadors to end child labour and turned a deaf ear to the solutions offered by child workers themselves. Excluding them from the debate and criminalising their means of livelihood without offering any viable alternatives, the ILO now resorts to issuing Red Cards to child workers around the world, symbolically debarring them from participation in the economic arena. In the presence of football stars who "kicked the ball" against child labour, this initiative was launched with a football match between children from the International School of Geneva and the Signal de Bernex Football Club, two sets of very privileged human beings who will never experience or understand the ensnarement of poverty, the complexity of the lives and the pain of working children who know they have few choices.

Footballers are shown the red card by umpires for misdemeanours committed by them, but working children were shown this card by the privileged for no fault of their own. They work because of the prevailing political and socio-economic conditions, for which the world that is zealously engaged in 'globalising' our planet on corporate lines is too busy to find solutions.

⁵The ILO Convention 182 defines the term the worst forms of child labour as:

- (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

⁶The ILO Convention 183 concerns the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour. By ratifying this Convention countries commit themselves to take immediate action to prohibit and eliminate the worst forms of child labour.

To quote journalist Palagunmi Sainath in 'Everybody Loves a Good Drought', "Development is the strategy of evasion. When you can't give people land reform, give them hybrid cows. When you can't send children to school, try non-formal education. When you can't provide basic health to people, talk of health insurance. Can't give them jobs? Not to worry, just redefine the words "employment opportunities". And one may add: 'If you don't want to really solve the causes of child labour just ban it and hope it will go away.'

Interestingly, the Millennium Development Goals (MDGs) do not include the elimination of child labour though the ILO lobbied very vociferously for their inclusion. Instead the MDG make a strong call for "fair globalisation" and "full and productive employment and decent work for all, including for women and young people," combining this with the central objective of "poverty reduction strategies." In fact, the MDGs go even further by resolving to "ensure full respect for the fundamental principles and rights to work." This is contrary to the approach of the ILO (that is mirrored by the World Trade Organisation and the World Bank) who deny children the 'right to any work' and violate their 'the fundamental rights' and the principles governing these in their zeal to implement the Conventions banning child labour. On the one hand the trade organisation clamouring for clauses that will reduce the so called "trade competition" between first and third world countries and on the other hand the traditional UN agencies set up to protect Human and Fundamental Rights fighting for autonomy to continue to fulfil their role.

With the US's attempt to include Social Clauses⁸ in General Agreement of Trade and Tariff - GATT (including a minimum age of employment for children; and measures setting minimum standards in respect of conditions of work), the world trade organisation donned the mantle of the ombudsperson of human rights. This is like the local money lender becoming the protector of human rights.

The irony is that while multinational corporations are demanding more deregulation of industry and the lowering of labour standards to give them more freedom to be 'efficient,' they are also clamouring for increased regulation of child labour laws to reduce competition from domestic industries. Neither is acceptable. On the one hand deregulation can lead to corporations being able to undermine basic social and human rights; on the other, overbearing regulations with regard to child labour give too much power to a few and a situation that leads to unfairness in trade and basic human rights.

To quote Ha-Joon Chang who teaches in the Faculty of Economics, University of Cambridge from Kicking Away The Ladder⁹: 'How did the rich countries really become rich?'

"The short answer to this question is that the developed countries did not get to where they are now through the policies and the institutions that they recommend to developing countries today. Most of them actively used 'bad' trade and industrial policies, such as infant industry protection and export subsidies - practices that these days are frowned upon, if not actively banned, by the WTO. Until they were quite developed (that is, until the late nineteenth to early twentieth century), they had very few of the institutions deemed essential by developing countries today, including such 'basic' institutions as central banks and limited liability companies.

⁷Palagunmi Sainath, *Everybody Loves a Good Drought; Stories from India's Poorest Districts*, (Penguin Books, 1996), p.421

⁸The issues sought to be included as a part of the Social Clauses in GATT were: (1) Freedom of association; Freedom to collective organisation and bargaining; (2) Freedom from forced or compulsory labour; (3) A minimum age of employment for children; and (4) Measures setting minimum standards in respect of conditions of work.

⁹Ha-Joon Chang *Kicking Away the Ladder Development Strategy in Historical Perspective*, published by Anthem Press, London, on 10 June 2002.

Also Ha-Joon Chang, "Kicking Away the Ladder", post-autistic economics review, issue no. 15, September 4, 2002, article 3. http://www.btinternet.com/~pae_news/review/issue15.htm

“If this is the case, aren't the developed countries, under the guise of recommending 'good' policies and institutions, actually making it difficult for the developing countries to use policies and institutions they themselves had used in order to develop economically in earlier times?

“It is a very common clever device that when anyone has attained the summit of greatness, he kicks away the ladder by which he has climbed up, in order to deprive others of the means of climbing up after him. In this lies the secret of the cosmopolitical doctrine of Adam Smith, and of the cosmopolitical tendencies of his great contemporary, William Pitt, and of all his successors in the British Government administrations.”

Huligamma remembers a time in her village when they heard news of the 'golden road' or 'Golden Quadrilateral' that was being built some four kilometres away. The family decided to go on a picnic to see this marvel. They packed their rotis and chutney and went to view it. They ate their lunch on the divider. Huligamma stared into the distance. It looked as if a mammoth black serpent had uncoiled itself, slithering over villages, fields, hills, lakes and forests.

At dusk, as they were returning home in their bullock cart, they passed rows and rows of women who were defecating along the road. Villages here had no toilets, no water and no sanitation. Women had to wait until dark to relieve themselves and the road was the safest place for that. Huligamma thought back to what she had seen that day, the golden road, and wondered at the incredible creation. How it had subdued nature and humankind! If Mother India was capable of this, why had she not bothered with the numerous problems her community suffered? Was Mother India too busy, or too tired? Had she no affection for them?

The Chief Economist for the World Bank, Larry Summers (later U.S. Treasury Secretary in the Clinton Administration), who was an ardent supporter of Structural Adjustment Policies, wrote a leaked internal memo in 1992 that exposed the extent to which international policies have an impact on countries around the world:

“Just between you and me, shouldn't the World Bank be encouraging more migration of dirty industries to the LDCs [less developed countries]? The economic logic behind dumping a load of toxic waste in the lowest wage country is impeccable, and we should face up to that... Under-populated countries in Africa are vastly under-polluted; their air quality is probably vastly inefficiently low compared to Los Angeles or Mexico City... The concern over an agent that causes a one in a million change in the odds of prostate cancer is obviously going to be much higher in a country where people survive to get prostate cancer than in a country where under-five mortality is 200 per thousand¹⁰.”

This is in an era where there is immense wealth in increasingly fewer hands. “Twenty per cent of the world's people in the highest-income countries account for 86 per cent of total private consumption expenditures the poorest 20 per cent a minuscule 1.3 per cent,” according to the United Nations Development Programme's 1998 Human Development Report.

Huligamma coughs and tries to cover her mouth against the exhaust fumes. She often has a bad cough, but this time it does not seem to be going away. She suddenly tenses; she had heard the corporation van approaching with a convoy. This signals the periodic round-up by the labour department in cooperation with the municipality and police. She grabs her brother and sister and rushes for a gap in the wall of an old house where a multi-storeyed office complex is being constructed. She ducks behind some rubble. Just in time! They have

¹⁰Lawrence Summers, 'Let them eat pollution,' The Economist, February 8, 1992. Quoted from Vandana Shiva, Stolen Harvest, (South End Press, 2000) p.6.

managed to escape! What a relief! Otherwise they would have been taken to the beggars' colony and would have had to buy themselves out by paying Rs. 200 each. She did not have that kind of money.

The Canadian government's website says, "Child labour is not an easy issue to resolve; while it seems noble to immediately withdraw investments and cooperation with firms and factories that employ child labour it may do more harm than good. Many of these children are from very poor families and work to pay for their family and/or their education. Depriving them of this income has led to some children seeking different, lower paid work, and even prostitution in some cases. Other ways with schemes to help children would likely be needed so that this labour can be phased out. A gradual phase-out is said to be a more preferable solution."

Journalist Shyamal Majumdar reflected on a recent piece of child labour legislation seeking to ban children from working as domestic servants or at hotels, tea shops, restaurants and resorts, in a piece titled 'Child labour ban: If wishes were horses...' in the Business Standard of August 2006¹¹. This ban is just an extension of the existing Child Labour Act of 1986. "Will the ban work?" he asked. "The answer is quite obvious, going by the track record so far. 'If wishes were horses, law could change men's minds,' says a former official in the Maharashtra labour department. That legislation can have only a negligible impact is apparent from the fact that child labour is nothing but a by-product of grinding poverty. These children are holding out a slim lifeline to impoverished families, or are just trying to keep themselves from starvation.

"The dilemma is similar to that of the ban on dance bars in Mumbai on the grounds that it would put an end to the exploitation of these women. What happened to those 70,000-odd bar girls after the ban? Some became prostitutes, some went back home only to be ostracised and some committed suicide. As long as alternative sources of income are not found for families whose children work in the banned sectors, the law would continue be flouted."

Huligamma's dream of becoming a teacher is fast fading away. She stares at the new ad for jeans, a bare-chested man with his hand inside the waistband of his faded and frayed jeans. She looks down at herself, torn and faded skirt and loose fitting blouse, two sizes too big. She wonders how she fits in. Are these two sides of the same world? Will they ever become one?

She watches her little brother and sister sharing a banana, each one making sure the other has had an equal share. Why didn't others do the same when they who had so little were so giving? What future did her siblings have, she wondered? What would become of them? They had no options and no choices. Each day was a struggle for survival and things were changing so fast.

She and her siblings, like millions of other children around the world, will live on the fringes of society, never really counted, never considered an economic or social asset, never becoming one of the mindless consumers that are central to the new age economy. She will remain one of the 'Excluded and Invisible,' a mere embarrassing statistic to be hidden amidst the folds of political rhetoric.

¹¹ Shyamal Majumdar / Business Standard/Mumbai August 10, 2006 / Child labour ban: If wishes were horses...

Say No to Tourism that Exploits a Child

EQUATIONS¹, India

The focus of this paper is to highlight the trends, concerns and responses on the issues of child abuse, trafficking and labour in the context of tourism policy and development in India

Tourism is linked to people, environment and natural resources and directly impacts them. Tourism policies have tended to focus on the unbridled growth and promotion of tourism and hardly ever acknowledge the negative fallouts of tourism development. Tourism development is mostly unregulated and not monitored for its negative impacts. The mitigation of negative impacts therefore is also not on the agenda. In developing countries, tourism development without responsibility, accountability and protective measures has led to sexual exploitation of children in the form of child abuse, child trafficking, child prostitution, pornography and child sex tourism, and increase in child labour. All these facts in turn increase the vulnerability of children that leads them to drugs, crimes, HIV/AIDS, and alienation from communities and families.

Part a: Trends and Issues

Child Sexual Abuse, Trafficking and Tourism

According to International Labour Organization (ILO) estimates, 15 percent of India's estimated 2.3 million commercial sex workers are children². They are sexually exploited in brothels, massage parlors, nightclubs, beauty salons, hotels, escort services, private houses as well as at railway stations, bus stations, streets, public parks and more recently in circuses³. While child sexual abuse is widespread, the unwillingness of adults to deal with the problem results in it remaining hidden and unreported, allowing offenders to commit the act again and again over long periods of time, with little risk of getting caught. Further anonymity and unaccountability of the tourist make the link between tourism and child sex abuse particularly pernicious. The likelihood that abusers are booked or brought to justice remains low. Legislation also has many loopholes and lacunae that allow traffickers and middlemen go scot-free.

The phenomenon comes to light

In India, the links between tourism and child exploitation came to light through the case of Freddy Peats, a 76 year old man of unknown origin who was arrested on 3rd April 1991 for sex crimes against young boys (as young as 3 years old). Until then, there was little or no awareness of the organised sexual exploitation of children, particularly trafficking, involving young boys in India, even though the involvement of female minors in prostitution was well known.. In March 1996, Freddy Peats was convicted of sex crimes against young boys in Goa. This was the first conviction for running an organised racket in paedophilia in India. But the incident was dismissed as an aberration.

Soon after, the case of Brinkman Helmut, a 57 years German paedophile was brought into the notice of Calangute Police Station, Goa in 1999. He was found guilty by the

¹ Equations paper "Say No to Tourism that Exploits the Child Trends and Issues on the Protection of Children in the context of Tourism in India 22nd meeting of the UNWTO Task Force for the Protection of Children in Tourism ITB Berlin 7th March 2008"

² U.S. Department of States, Bureau of Democracy, Human Rights and Labour "Country Reports on Human Rights Practices, South Asia, India" 2006

³ Global Monitoring Report on the Status of action against commercial sexual exploitation of children in India, 2006 by End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes (ECPAT International)

assistant sessions judge Panaji under Section 373⁴ and 377⁵ of Indian Penal Code (IPC) 1860, hiring of a minor for illicit or immoral purpose and for committing unnatural sexual offences. He was awarded six years rigorous imprisonment. However, on 29th September 2000 he was acquitted of the charges by the additional sessions judge Mapusa. In spite of strong evidence against him, the case got dismissed because Helmut's whereabouts were unknown. Not even two months after the case of a "wanted" paedophile fleeing the country coming to light, yet another paedophile fled the country, jumping bail in Goa⁶. Dominique Sabire, French national arrested by the Delhi Central Bureau of Investigation (CBI) in the child abuse racket run in Goa by Freddy Peats in the early 90's, also seemed have disappeared from India possibly due to the loose extradition laws.

A twist in the tale:

The risk to civil society organisation that work to combat and fight child abuse is increasing. In November 2004, Jan Ugahi an organization working on child rights issues in Goa, filed a case against Giorgio Lazini a 59 year old Italian in for allegedly having wrongfully confined a minor girl in his house. He later faced charges of sexually abusing and raping her. The Goa Children's Court however, gave Lazinni the benefit of the doubt and acquitted him. In 2007 Lazinni's lawyer in Goa has given a new twist to the state's intense debate over paedophilia by filing a Rs. 60 million lawsuit against Jan Ugahi stating 'loss of reputation, loss of business, compensation for wrongful detention, and loss of time and money in defending false cases'⁷.

In the case against Werner Wulf Ingo, a 54 year old Australian paedophile, found guilty by the assistant sessions judge Panaji under Section 373 and 377 of the IPC, He fled from India to Australia. In 2005 he was extradited from Australia to India by the Australian Federal Government to face charges over his role in Freddy Peats' paedophile network. He was placed in police custody in Delhi on 4th August 2006. He had made three trips to Goa, in 1987, 1988 and 1989. Bernadette McMenamin⁸, CEO Child Wise, Australia commented "the extradition of an Australian to face child sex charges in a developing country was unprecedented. "I cannot think of any other case when an Australian has been extradited to face charges in a Third World Country", Ms. Mcmenamin observed "there has always been a propensity for these people to believe they won't be charged in these countries, and if they are, then won't be sent back to face prosecution". The case against Wulf Werner Ingo is still going on in the Court of Goa before the additional Sessions Judge.

Acknowledging child abuse and exploitation in tourism

Tourism related child sexual abuse is not a phenomenon limited to Goa and not isolated to foreign tourists alone. A series of studies published by important official agencies and organisations working on protection of children have highlighted the links between tourism and the increase in child sexual abuse. The magnitude of the problem is not known since many of them are unreported or misreported due to the stigma and shame attached to this.

⁴Section 373 of IPC states - Buying Minors for purpose of prostitution, tec. Whoever buys, hires or otherwise obtains possession of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, of knowing it to be likely that such person will at any age be employed or used for any purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

⁵Section 377 of IPC states Unnatural Offences - Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

⁶Sandesh Prabhudesai, "Another paedophile goes scot free". The Pioneer, Goa, 14th April 2002

⁷NGO face rs. 60mn suit over paedophilia charges, dated 26th July 2007:

I <http://www.nerve.in/news:25350077123>

⁸Child Sexual Abuse in Goa: A Case Analysis by Nishtha Desai, Emidio Pinho, Audrey Pinto, July 2006

Studies by the National Commission for Women⁹, the National Human Rights Commission¹⁰ and by ECPAT¹¹ all provide conclusive evidence of the growing phenomena. Child sex Tourism is widespread in pilgrim, coastal tourism and most major tourist destinations such like Kerala, Delhi, Agra-U P, Jaipur-Rajasthan, Orissa, Andhra Pradesh, and Pondicherry. The National Human Rights Commission and National Commission for Women also identified Maharashtra, Karnataka, Kerala, Tamil Nadu, Andhra Pradesh, West Bengal, Orissa and Rajasthan as areas of high human trafficking.

The ECPAT study on “A Situational Analysis of Child Sex Tourism in India” conducted by EQUATIONS in 2003 provided evidence of child sex tourism in Kovalam, Kerala. There are reports of tourists who are moving from Goa to areas of North Karnataka such as Gokarna and Karwar, which are presently being developed for tourism. Tourists have settled in the popular Om and Kudle beaches of these regions, which have become hideouts where sexual exploitation of children is also reported to take place¹². Further the study “Trafficking in Women and Children in India”, by the National Human Rights Commission published in January 2006 also reiterates that the beaches of Goa and Kovalam are increasingly becoming destinations for those seeking child prostitutes. In Orissa, Eastern India, organised child sex crime is taking place with the connivance of tour operator's hotels and the local people in a village called Pentakota which is on the outskirts of Puri in Orissa¹³.

Another study published by ECPAT “The Situation Analysis of prostitution of boys in South Asia” indicated that prostitution of boys is an upcoming problem in tourism destination like India¹⁴, Nepal, Sri Lanka, Pakistan and Bangladesh. It states *“Such exploitation occurs in locales such as streets, markets, bus terminals, hotels, restaurants and religious establishments. A large number of boys living on the streets are victims of sexual exploitation, and the average age of boys being forced into exploitation is approximately 12.5 years or younger. The majority of sexually exploited boys have experienced sexual abuse prior to their entrapment into prostitution”* EQUATIONS is also investigating reports of increasing prostitution of male children in pilgrim tourist destinations in India. New forms of tourism such a houseboats and home stays also increase the vulnerability of children to abuse as discovery of the abuse is more difficult. Before promoting these the Ministry should also devise measures and mechanisms for regulation and protection

Child Labour in Tourism

The government of India announced a ban effective 10th October 2006 on the employment of children as workers in roadside eateries, teashops, restaurants, hotels etc. Many of these children, according to the Ministry of Labour and Employment of the Government of India, are subjected to physical violence, psychological trauma and even sexual abuse. With this step child labour in the hospitality sector is now categorised as hazardous work under the Child Labour Act.

In order to be seen implementing the ban, children are picked up from the streets, from small hotels, road side eateries and put them to rehabilitation and juvenile homes. Given the way these homes are run, they are not protected from abuse and in many situations work in abysmal conditions. This makes the child even more vulnerable to exploitation and

⁹ Study on Coastal Sex Tourism and Gender- study done by EQUATIONS For National Commission of Women 2002

¹⁰ Trafficking of Women and Children in India, study by National Human Rights Commission, 2003

¹¹ EQUATIONS is a member of End Child Prostitution, Child Pornography, and Trafficking of Children for Sexual Purpose (ECPAT) International

¹² Situational Analysis of Child Sex Tourism in India (Goa and Kerala) by EQUATIONS research done for ECPAT, December 2003

¹³ 10th November 2006, The Outlook: HIV @rs100- Off Puri's holy precinct, u nholy sex tourism has made Pentakota, a small fishing hamlet, paradise for paedophiles.

¹⁴ Situational Analysis report on Prostitution of Boys in India (Hyderabad), June 2006, ECPAT International

the problems are pushed underground. It is important that the government has implementable mechanisms where the children can be reunited with communities and families rather than institutionalised mechanisms such as putting them in Juvenile homes and rehabilitation homes and continuing their abuse.

The recognition that a bulk of tourism services and economy functions in the informal sector which is most vulnerable and least protected by regulation and amenities is long overdue. Children work in this sector in large numbers and are particularly vulnerable to harsh working conditions, lack of safety and vulnerability to abuse. This must be recognized by the government and proper monitoring mechanism to give care and protection must be established.

Thus one and a half years down the line, post the ban, enormous challenges remain in translating the law into practice. Civil society organisations fear that a blanket ban without understanding the root causes of child labour would only push the problems into more dangerous ways underground have unfortunately proved true. Available data and estimates indicate that very few cases have been registered in the past year on account of this ban. Many children are still being seen hard at work in restaurants, hotels, tea stalls, etc. all over the country. While the ban evoked responses from a wide range of actors particularly NGO's and civil society organisations working on child rights, the tourism industry was conspicuously silent.

The landscape of child related legislations

In India there are a host of related social legislation and criminal laws which have some beneficial provisions for the care, protection and rehabilitation of children. The laws relating to commerce, industry and trade have also some provisions for children, but they provide little protection or cater to the developmental needs of the child. The key bodies concerned with child related laws are the Ministry of Women and Child Development (MWCD), the Ministry of Labour (MoL) and the National Commission for Children (NCC) and the National Human Rights Commission (NHRC). There continue to be major gaps in the provisions relating to child abuse particularly in cases of trafficking, sexual and forced labour, child pornography, child sex tourism and sexual assault of male children.

The Offences against Children's Bill¹⁵ proposed by the MWCD which is still in the draft stage, is hoped to address current lacunae such as including the definition of "child in need", ensuring that the age of child is not reduced below 18. The bill it is hoped will also address commercial sexual exploitation (child sex tourism e.g.) and pornography as well consider child abuse and exploitation of children in a context which is commercial as this is a loophole used by offenders.

Offences relating to economic exploitation of a child and child labour must also be recognised and brought into the preview of the law. It is important to include sections on "Employment of Children in Hospitality Sector", "Employment of children in unorganised sector" like selling trinkets, nuts tea etc in the beaches and road side who are also equally vulnerable to various forms of abuse. It is important to note that sex tourism is not the only component of tourism which abuses children. As tourism creates situations which encourages child labour, resulting in trafficking and sexual exploitation, it is important to highlight these inter linkages in the bill to protect children from such forms of exploitation.

¹⁵Paedophile tourism may figure in child abuse Bill, Himanshi Dhawan, [14 Mar, 2007 0014hrs ISTTIMES NEWS NETWORK] (The source: http://timesofindia.indiatimes.com/NEWS/India/Paedophile_tourism_may_figure_in_child_abuse_Bill/articleshow/1759585.cms)

The landmark Goa Children's Act 2003- providing a ray of hope

Intensive lobbying and advocacy by the civil society groups in Goa working on child rights and child protection resulted in the passing of the Goa Children's Act in 2003. This was the first legislation that recognised exploitation of children in tourism as well and incorporates a section that recognizes and deals with the protection of children in the context of tourism.

Within two years of its enactment this Act was amended in 2005¹⁶. The amendment diluted the timelines for implementation with out adequate rationale and omitted few important sections from the Act. One of the important Section 8 (11) which stated that offences in case of tourism related child sexual abuse shall be non-bailable offence under CrPC¹⁷ was repealed. This makes the Act virtually toothless in relation to sexual exploitation of children by tourist in Goa. After seven years of the enactment of the Act only seven cases have come up before different Courts in Goa in relation to sexual exploitation of children by tourist of which only two offenders have been convicted.

While these amendments are retrograde, it must be noted that the government has also introduced few welcome amendments by adding important definitions on commercial sexual exploitation of children, child trafficking to the Act and by fixing specific penalty for non-implementation and conferring responsibility of protection of children to various public authorities. Subsequent to it being passed and a set of amendments in 2005, various stakeholders associated with the tourism and travel sector in Goa have engaged in discussion on how to implement the provisions and requirements of the legislation. The Goa Children's Act is unique because it does not merely recommend punitive measure against offenders, but suggests ways and means of dealing with the larger issues of protecting, promoting and preserving the best interest of children in Goa. It attempts to place responsibility on different sections of the society and its institutions to play a role in protecting all children and in preventing the abuse of any child. The hotel owners, the photo studios, cyber care operators, the police, the tourism department, the travel and tourism trade industry are each expected to be alert as well as perform particular roles to achieve this.

Unfortunately, the fight against child pornography and efforts to make it an offence under the Information Technology (IT) Act received a serious setback as a provision on the same suggested by an expert committee has mysteriously disappeared from the final draft of the IT (Amendment) Bill. The final draft of the Information Technology (Amendment) Bill does not incorporate the recommendations of the Expert Committee to include a provision on child pornography¹⁸. Instead, the latest draft of the Bill deleted the term "child pornography" and replaced it with terminology of 'sexually explicit act'. This that erodes the level of protection offered as the provision does not clearly define and prohibit child pornography. In the light of the MWCD report on abuse and violence against children (2006) which has shown that sexual abuse of children has reached alarming proportions in the country, we believe these and other protection initiatives are urgently required.

In the run up to consolidating India's Eleventh Five Year Plan 2007-2012¹⁹ the Planning Commission constituted several working groups to give their inputs. The MWCD in its working groups report mentioned that tourism is known to directly contribute to the exploitation of the child in the form of child labour, child trafficking and the sexual

¹⁶The Goa Children's (Amendment) Act, 2005, amendment enforced from 15.12.2005

¹⁷The Code of Criminal Procedure, 1973

¹⁸Department of Information Technology. Ministry of Communications & Information Technology. Government of India, New Delhi. Report of the Expert Committee, Proposed Amendments to Information Technology Act 200, proposed section 67(2).

¹⁹Report on the working group on development of children for the Eleventh Five Year Plan (2007-2012), by Ministry of Women and Child Development, Government of India

exploitation of children. Unfortunately, the Ministry of Tourism in its Tourism Working Group Report makes no mention of issues related to exploitation of children in the context of tourism development.

The National Human Rights Commission (NHRC) along with National Commission for Women (NCW) and The Ministry of Women and Child Development (MWCD) have also come up with guidelines²⁰ in preventing and combating human trafficking with special focus on children and women. This plan of action also recognized that tourism is a cause for trafficking. In 2007, the National Commission for Protection of Child Rights was set up in India to enquire into complaints and take suo motu cognisance of matters relating to deprivation of child rights, non-implementation of laws providing for protection and development of children and non-compliance of policy decisions, guidelines or instructions aimed at their welfare.

Part B: EQUATIONS Call

EQUATIONS calls for responsibility in tourism and holds Governments, tourism promoters and the industry accountable for ensuring that tourism is just, non-exploitative and equitable

We call upon various stakeholders to take urgent steps to ensure protection of children in the context of tourism

The Government of India

- a. Sexual abuse and exploitation of children needs to be considered a very serious crime and to impose very severe and deterrent punishment to the offenders, Indian and foreign. We call upon the Government to come up with a comprehensive Act which deals with child abuse and exploitation taking into account the child abuse in the context of tourism. The Government also needs to come up extradition laws to ensure that perpetrators of crimes who are foreigners are brought to book and to ensure that no foreign escapes punishment by leaving this country
- b. To agree on a uniform age to define a child in legal terms as various acts in India concerning children have different age limit allowing for many loopholes. We recommend that "a child means every human being below the age of 18 years as mentioned in the Article 1 of The United Nations Convention on the Rights of the Child (UNCRC) which is ratified by India.
- c. Instead of simply banning child labour in the hospitality sector, it is critical that the causes for child labour (mostly linked to poverty) are addressed and the implementation issues such as the rehabilitation of child labourers after their removal from labour, the long-term tracking of these children to prevent their return to labour must also be taken into consideration and addressed simultaneously, for the issue of child labour to be resolved in a meaningful and sustainable manner.
- d. The National and State Tourism Policies need to acknowledge the role of tourism in exploiting children, clearly denounce sexual exploitation of children and commit that tourism will be child exploitation free zones
- e. The Ministry of Tourism in particular needs to be more accountable and evolve a concrete plan of action to counter child abuse in tourism. It needs to put monitoring mechanisms in place with the active participation of stake holders such as industry, tour operators, travel agents, hotels local authorities, the judiciary, the police, child rights and other civil society organisations and communities
- f. Sensitisation and training of authorities who deal with children is particularly important

²⁰ Integrated Plan of Action on Trafficking in Human Beings with special focus on children and women, by Ministry of Women and Child Development, Government of India, 2007

The Tourism, Travel and Hospitality Industry

We call upon the tourism industry, tour operators, travel agencies, hotels to come up with a Code of conduct related to the protection of children from all forms of exploitation in tourism. They must put in place Reporting and Monitoring Mechanisms and must promote socially responsible tourism. Some protective clauses could be:

- All establishments which provide lodging, accommodation, temporary housing, rooms, place to stay, quarters, lodge or any similar facility should ensure that children are safe and not at risk of child abuse within their premises including all adjoining beaches, parks etc.
- They must make sure that no child is allowed to enter any such establishment unless the child is registered as staying in the room with family, relatives or person related by blood.
- They must ensure that no child has access to any internet facilities which are not fitted with filters and to any objectionable materials including through film, or videos, disc-players, cable or any other medium provided by that establishment.
- The owner and the manager of the hotel or establishment should be held solely responsible for any contraventions

In particular we urge the industry to take into account the fact that much of the child abuse is visible (though not restricted to the small and medium and informal sectors. Travel and Tourism linked bodies and associations must reach out to these sectors and not shrug off the problem as being “not in my backyard”.

The UNWTO

We call upon the UNWTO to demonstrate its commitment to address the issue by

- a. Actively working with the tourism industry to develop and implement codes of conduct which will protect children from exploitation in the context of tourism.
- b. To work with various formations of industries, with small and medium scale enterprises, as it is in the informal and the small and medium sectors where a lot of exploitation of children happens.
- c. To hold detailed consultations with multiple stakeholders that aims at understanding, interventions and solutions to the problem. This could be done through :
 - a. To encourage and support (including through financial support) organizations in the civil society space to participate in the Task Force meetings (as this is usually beyond their reach) so that their experiences and recommendation find a place in the body of experience that the UNWTO considers to make its policies and plans.
 - b. To encourage and support research studies and action research to understand the realities on the ground. This will indicate UNWTO's commitment to the issue much more strongly than only organising brief Task Force meetings. Further more, these meetings seem to address the issue at a very general level and it is not clear at all what have been the clear impacts and outcomes of these series of meetings.
 - c. The task force works with an expanded agenda of engaging on sexual exploitation, trafficking and labour. It is critical that in expanding the mandate it does not result in generalised instruments and processes to address each of these issues as this would be

self defeating. The task force may need to appoint specific committees or groups to come up with measures and analysis that address the context and needs of each of these areas with clear focus. We are quite concerned that in the use of terms such as decent opportunities and empowerment of minors in the context of child labour in tourism. We wish to remind the UNWTO of its own commitment in its Global Code of ethics Article 2 which in turn draws in its preamble on universally recognised conventions such as, “Conventions on the Rights of the Child”, “Stockholm Declaration against the Commercial Sexual Exploitation of Children” and the “Convention and recommendation adopted by the International Labour Organization in the areas of collective conventions, prohibition of forced and child labour”. We therefore wonder if the UNWTO has changed its position in relation to the issue of prohibition of child labour.

- d. The UNWTO website has very little material on the issue of exploitation of children in tourism. To our knowledge there have been no World Tourism Day themes or any conference called by the UNWTO on the issue of exploitation of children. We find it surprising that such a serious violation of the right of the most vulnerable should receive so little attention of the UNWTO.
- e. The Global Code of Ethics for Tourism must be expanded on this issue to detail the problems of exploitation of children and to clearly condemn tourism's complicity and role in child trafficking, child labour and sexual exploitation of children.

Responsibility in Tourism and the Goa Children's Act in the Context of Tourism

EQUATIONS¹

Tourism is viewed as a major economic growth opportunity in most countries. However, the rapid growth of tourism does not only represent an economic boon for most tourism destinations; it often produces negative socio-cultural impacts for the communities in these destinations.

Tourism is linked to people environment and natural resources and directly impacts them. Government tourism policies (both national and state) focus more on the growth and promotion of tourism and hardly ever acknowledge the negative fallouts of tourism development. This results in unthinking promotion of investments in tourism, and tourism development being unregulated and not monitored for its negative impacts. The mitigation of these negative impacts therefore is also not on the agenda.

A little known and even less acknowledged impact is that on children. Tourism development without responsibility, accountability and protective measures has led to sexual exploitation of children, trafficking and increase in child labour. Increased vulnerability to drugs, crime, and alienation from communities and families are related problems.

Intensive lobbying and advocacy by civil society groups working on the rights of the child and child protection resulted in the Goa children's Act 2003 in Goa. It was a landmark initiative of the local civil society groups in Goa with the support of the child rights groups through out the country. This was the first legislation that recognized exploitation of children in tourism and incorporated a section that recognizes and deals with the protection of children in the context of tourism. Subsequent to its being passed and a set of amendments in 2005, various stakeholders associated with the tourism and travel sector in Goa have engaged in discussions on how to implement the provisions and requirements of the legislation.

An overview of the Goa Children's Act, 2003 shows that the Act covers issues like the rights of children, education, health and nutrition, children's homes, child labour, child abuse, child sexual trafficking, children in different circumstances, girl child, differently abled children, exploitation of children in tourism, violations and penalties and the children court which aims to make the process of law and justice child friendly.

The Goa Children's Act is unique because it does not merely recommend punitive measures against offenders, but suggests ways and means of dealing with the larger issues of protecting, promoting and preserving the best interest of children in Goa and to create a society that is proud to be child friendly. It attempts to place responsibility on different sections of the society and its institutions to play a role in protecting all children and in preventing the abuse of any child. The hotel owners, the photo studios, cyber care operators, the police, the tourism department, the travel and tourism trade industry are each expected to keep their eyes and ears open as well as perform particular roles to achieve this.

Within two years of its enactment this Act was amended in the year 2005². The parent Act called for passing of many rules and sub-rules that would be necessary in order to implement the Act in its true spirit. However, the state government failed in part in its duty

¹ EQUATIONS, 2006

² The Goa Children's (Amendment) Act, 2005 Amendment enforced from 15.12.2005

to formulate the rules in a fashion in which the spirit and core principles of the act could be seen in action thus making the legislation less effective. The amendment diluted the timelines without adequate rationale and omitted few important sections³ from the Act. It must also be noted that the government has also introduced few welcome amendments by adding important definitions on commercial sexual exploitation of children, child trafficking to the Act and by fixing specific penalty for non-implementation and conferring responsibility of protection of children to various public authorities. (Appendix I)

Salient Features of the Act:

Section 7: Child Labour and Trafficking

According to this Section no child under 14 years is permitted to work. Penalties are defined for those who employ children and for those who are responsible for the trafficking of children. The Goa state is to prepare a Plan of Action to eradicate all forms of child labour in a phased manner and for the rehabilitation of children.

This Act has ignored the distinction between hazardous and non hazardous occupations and has declared all kinds of child labour as prohibited. This Act has recognized that children working in tourism destinations such as those employed in hotels, rag picking, plastic bag selling, nut selling, running errands, carrying loads of shoppers is undesirable and prohibits all forms of labour or employment of children.

Much before the recent Notification in August 2006 by the Department of Labour and Employment, Government of India on banning child labour in domestic and hospitality sectors⁴ came up, the Goa Children Act had identified and acknowledged the exploitation of children in the tourism industry. With the present notification this position gets reemphasized.

Employment of children in these occupations makes them vulnerable to exploitation and abuse - physical, mental and sexual. It affects their right to be protected from all kinds of abuse and maltreatment.

The State is bound by this law to ensure that a rehabilitation programme is made and to formulate a Plan of Action to eradicate all forms of child labour from the state within a period of two years from the commencement of the Act. However, the Government used the amendment to dilute the state's obligation by stating that it would "eradicate in a phased manner". It does not mention the plan of action which is to be undertaken in a phased manner and does not impose a definite time period to eradicate child labour. The status as on date is that the Goa Government is yet to come out with a Plan of Action. Child labour continues to be high in the tourist destinations of Goa. The Government seems to have retreated on its duties and has taken no visible action towards implementing the existing law on child labour.

This Section also states that trafficking of children for the purpose of employment shall be prohibited and any person who employs, aids, or abets (trafficked or) trafficking of children will be penalized. This Act recognizes that tourism creates situations which encourages child labour which in turn promote trafficking of children.

³One of the important Section 8 (11) which stated that offences in case of tourism related child sexual abuse shall be non-bailable offence under CrPC was amended. This section was important as it acknowledged the fact that children are sexually abused and exploited by tourists in Goa. The amendment repealed the section completely. There is high risk that this in turn will once again establish conducive atmosphere for tourists to engage in child sexual abuse and exploitation and trafficking in Goa. This actually makes the Act toothless in relation to sexual exploitation of children by tourists in Goa.

⁴The Ministry of Labour and Employment, Government of India, issued a notification amending the Child Labour (Prohibition and Regulation) Act 1986 on the 1st August 2006. This Notification bans child labour in domestic and hospitality sector.

Tourism needs to be child friendly and children should be protected from all forms of exploitation in tourist destinations. If the public authorities truly make use of this provision and fulfill their duties and responsibilities in its spirit most cases of exploitation can be intercepted and stopped.

Section 8: Child Abuse and Trafficking

This Section states that all children need to be assured of a safe environment in which they will not be abused in any way and their development will be nurtured. Penalties are defined for those who commit sexual assault. This section also provides sensitisation of the police and for all those involved in the healing, rehabilitation and other assistance programmes for child victims and better investigation techniques. The Act calls for the Tourism Department to evolve a Child Friendly Tourism Code in collaboration with the Travel and Tourism Trade of Goa for adopting good practices by the tourism industry in the best interests of children.

This Act prohibits adults to reside with or keep any child who is not related by blood without permission from the competent authority⁵. The responsibility of taking permission shall lie with the person who resides or wishes to reside with a child not related by blood. The onus is on the adults⁶ which are defined by the Act. This is a prohibitory provision which is likely to be a deterrent for the tourists who intend to abuse children.

All hotels and other establishments⁷ providing boarding or lodging or any similar facility shall ensure that children are safe and not at risk of child abuse within their premises including all adjoining beaches, parks etc. Hotels are also responsible for ensuring that children do not have access to internet facilities that are not fitted with filters and that they have no access to any objectionable materials through any other medium such as videos, cable⁸ etc. In the past, the industry never acknowledged incidents of exploitation of children within their premises and in adjoining areas. They have rarely reported such incidents to the police and to other authorities or proactively taken action against such incidents. Now this Act has made the tourism industry legally liable and responsible for the protection of children against such abuse. The law imparts obligation on the tourism industry to question any tourist accompanied by children and ascertain the safety of the child.

The responsibility lies with public authorities like district police, airport authority, border police, railway police, traffic police to identify and report suspected cases of trafficking of children for exploitation and abuse by adults.

It is the responsibility of the tourism department of the Goa to evolve a child friendly tourism code for the state in collaboration with the travel and tourism trade of Goa. This section emphasise that Government and the tourism industry should work together to ensure the safety of children in tourism destinations and the code will be used as a means to protect children from exploitation through tourism. (Refer appendix I for a detailed analysis of relevant sections of the Goa Children's Act in the context of tourism and the responsibilities of various stakeholders)

⁵Competent authority is the Secretary, Department of Women and Child, Goa

⁶Section 8(4) of the Act Onus on person- "it has been found that adults "keep" children with them for a number of ostensible reason and in many cases this is an arrangement for the sexual abuse of the child. All persons, who keep with them or reside wholly, partly or in any form with one or more child/children who is not related to them by blood, shall inform this fact immediately to the Director as per the prescribed form".

⁷Section 8(10) (a) (d) "Tourism establishment have to prove that no abuse/exploitation of children happens in their premises and adjoining areas"

⁸Article by Nishtha Desai from Child Rights in Goa on The Goa Children's Act and its implementation.

Section 13: Other Provisions

This Section calls for formulation of child code by police department⁹ which includes child friendly police stations, interaction and behaviour patterns with children, mandatory sensitization programmes etc.

This is a very important provision in all cases of children in conflict with the law. Be it tourism related or otherwise. In all such cases the child comes in close contact with police. Formulation of an exclusive child code will ensure that police are made aware of the issues and concerns with respect to the children.

Though tourist police are deputed in various places as part of this law, they have proved to be more tourist friendly than child friendly. They tend to pay attention to the needs of the tourists only, resulting in the child being in situations of vulnerability, risk and abuse. Concientisation of the police is important to protect the rights of the children and the dangers that the children potentially face from tourists.

In order to press for implementation of the Act in its intended spirit, and to plug its loopholes, NGOs (Children's Rights in Goa, Arz, Jan Ugahi, Bailancho Saad, WISE, Bailancho EQUATIONS, Sangath, Child Line, EQUATIONS etc) have initiated advocacy efforts with Goa Government to implement the Children's Act for the protection of the children. Sections of the industry have also come forward to partner in this process. They are also working in close association with Department of Tourism (DOT), Goa. Child Rights in Goa has also embarked on a mass campaign on beaches, important tourist centres, with panchayats and small hotels, cafes to implement and monitor the child friendly tourism guidelines.

The way forward to prevent exploitation of children is to involve all stakeholders of tourism such as local governments and communities, departments of tourism, culture, social welfare, environment & forests, commerce & industry, women & child and Panchayat Raj, the tourism industries and civil society groups to play a role in enforcing and imbibing the principles of responsibility in tourism in relation to protection of children and their rights.

⁹Section 13(14) of the Act

The Goa Children's Act

Children's Rights in Goa¹

Goa has the unique distinction of being the only state in India to have a comprehensive law which attempts to make the United Nations Convention of the Rights of the Child legally enforceable. It was passed in the Goa Assembly on 30 April 2003 and later received the assent of the Governor. It is a gazetted Act as of 14 July 2003. The Rules of some sections of the Act have been framed. It attempts to look at children in a holistic manner, providing for the protection of children's rights in the home, in educational institutions, by the health care system, and attempts to address the issues of trafficking of children and child labour. It also provides for the setting up of Children's Courts in an attempt to make the process of law and justice child-friendly.

The Goa Children's (Amendment) Act 2005

Within two years of the enactment of this Act the new Secretary, Women and Child Development, Santosh Vaidya, initiated a process of drafting a comprehensive set of amendments to the Act as there were problems coming in the way of its effective implementation and a number of procedural difficulties. The Director of Prosecution was involved in this process and NGOs were invited to give their inputs. This set of amendments was notified in December 2005 as the Goa Children's (Amendment) Act 2005.

Allocating penalties

The Amendment process was essential to make the Act enforceable. In the original Act various provisions existed without any penalty stipulated for their contravention. This reduced it to a 'wish list'. Now penalties have been stipulated. However for Sections 3, 4, 5 and 7 (5c) the Competent Authority, i.e. the Secretary Women and Child Development is the authority that can take action against the offender. The penalties for contraventions under these sections constitute various fine amounts without imprisonment. In the case of the other provisions the Children's Court is the authority which will decide on action to be taken.

As per the amended Act the penalty for grave sexual assault has been increased from a minimum of 7 years and a maximum of 10 years imprisonment to a minimum of 10 years and a maximum sentence of life imprisonment.

Hotel managers and owners who compromise the safety of children on their premises can face imprisonment of upto 3 years and a fine of upto one lakh rupees. Anyone who engages in or aids or abets the sale of a child is liable to 3 to 7 years imprisonment or a fine of upto one lakh rupees.

Pro-active Steps Recommended by the Act

- A basic thrust of the law is to evolve a society that is child friendly. In this spirit it provides for proactive measures on the part of the state and different sectors of society. Some of these measures are:
The setting up of Victim Assistance Units: This is an especially welcome measure which will entail setting up of multi-disciplinary units that include social workers/counsellors, lawyers and police to help the child to deal with the trauma of abuse and which will help the child in the pre-trial, trial and post-trial phases. procedures. [8 (19)] These units could also play a role in preventing witnesses (often the victim) in turning hostile during the trial.

¹This article is from Children's Rights in Goa (CRG), they can be contacted at F5, Meera Bldg, Near Gomantak Bhavan, St. Inez, Panaji, Goa 403 001, Tel. No. (0832) 2426518 and through crg.goa@gmail.com. This paper is an extract from Child Sexual Abuse in Goa: A Case Analysis, by Nishtha Desai, Emidio Pinho and Audrey Pinto, Vikas Adhyayan Kendra: 2006

- **Sensitisation of the police and sensitisation training for all those involved in the healing, rehabilitation and other assistance programmes for child victims:** Police officers will as part of their training be familiarised with the rights of children and the relevant laws. [8 (20-21)]
- **Better investigation techniques:** The government is also authorised to appoint persons to go under cover and pose as clients for child prostitutes or as employers for child labour, for better investigation. [8 (23)]
- **Evolving a Child Friendly Tourism Code:** The tourism department in collaboration with the travel and Tourism Trade of Goa is to formulate such a code. This will facilitate the detailing of 'good practices' to be adopted by all members of the tourism industry in the best interests of children. [8 (22)]
- **Setting up of a Children's Court:** The setting up of a Children's Court to try all offences against children is a bold step prescribed by this law. A child friendly court could help to minimise the intimidating process that abused children are subject to in courts, which even adults find awesome and terrifying. [8 (27)]
- **State Level Authority:** The GCA provides for the setting up of a State Commission for Children which is responsible for encouraging all sectors of society to respect the rights of the child. It is supposed to monitor the implementation of the UN-CRC in Goa. [13 (5)]
- **Village and City Child Committees:** Panchayats and municipal bodies respectively are required to set up village and city child committees comprising five persons, one of whom should be a child above the age of 15 years old. These committees are supposed to work with other departments to implement the Plans of Action under the Act to eradicate illiteracy, child labour and the commercial sexual exploitation of children. [13 (8&9)]
- **State Council:** A body comprising persons from media and others is to monitor and prevent children being exposed to unsuitable mass media. [13 (12)]
- **District Inspection Teams (DITs):** are to scrutinise applications made by individuals/agencies to open children's homes and make their recommendations to the Director DWCD. The DITs are also supposed to inspect the homes. The DITs are also supposed to be informed by the homes their plans for each child after he/she reaches the age of 18 years. In the case of a death of a child the homes are required to report about the circumstances of the death to the DIT.
- **Responsibility on Cyber Cafes:** Children below the age of 14 years cannot enter a cyber cafe or any other facility providing computer services unless accompanied by an adult. Such establishments are to ensure that child-friendly safeguards are installed and that children below the age of 14 years can only access the internet in the presence of an adult from the establishment. [Section 13, Other Provisions Clauses (16-18)]
- **Onus on establishments:** Hotels and other establishments that provide boarding lodging or any similar facility have the responsibility of ensuring the safety of children in their premises. Significantly, no child shall be allowed to enter any room of any hotel or establishment with an unrelated adult, with exceptions being made for 'reasonable areas' such as a teacher with students or children staying with friends. The owner and the manager will be held responsible for violation of this section. [8 (10a-b)] Hotels are responsible for ensuring that children do not have access to internet facilities that are not fitted with filters and that they have no access to any 'objectionable material' through any other medium such as videos, cable. [8 (10c)]

The Children's Act is unusual because in dealing with child sexual abuse it attempts to place responsibility on different sections of society to play a role in protecting all children and preventing the abuse of any child. The hotel owners, the photo studios, cyber cafe operators, the police, the tourism department and all those involved in the travel and tourism trade are expected to keep their eyes open and fulfil their duties, sensitive to the situation of any child they may come across in the performance of their duties. Moreover, it also seeks to establish child friendly court procedures which will help to ensure that children are able to give evidence without being exposed to the presence of the perpetrators of the crime. Provisions to address child sexual abuse and travelling sex offenders

A stumbling block in the prosecution of paedophiles has been the absence of laws that comprehensively deal with the specific problem of paedophilia. Some of the salient features contained in this Act in the context of the sexual abuse of children in general and tourism related paedophilia in particular are as follows:

Definition of Sexual Offences Sexual Assault, Grave Sexual Assault and Incest

The definition of sexual assault In Section 2, which deals with definitions sexual offences are classified into 'grave sexual assault', 'sexual assault' and incest. Rape was considered as a form of grave sexual assault in the original Act. But in the amendment to the Act 'rape' has been added as a separate offence with a proviso that in cases of rape the IPC section 375 would prevail.

'Grave sexual assault' covers all form of sexual intercourse including oral sex and anal sex as well as offences such as making children pose for pornographic films, making children have sex with each other and deliberately causing injury to the sexual organs of a child. 'Sexual assault' includes showing children pornographic pictures and exhibitionism. By including a wide range of possible activities that an offender may engage in, it is hoped that the focus will shift from the present one-point-programme of detecting semen in the vagina/anus of the child while investigating cases of child sexual abuse.

Punishment Prescribed for Sexual Offences

The punishment prescribed for grave sexual assault in Section 8, Clause (2) was set at seven to 10 years imprisonment and a fine of Rs 2,00,000. The imprisonment period has been increased to 10 years which could extend to life imprisonment with the amendment to the Act.

- The punishment for child abuse or sexual assault is a sentence of up to seven years and a fine of Rs 1,00,000. [8 (2)]
- The punishment for incest is imprisonment for a period of ten years to life imprisonment and a fine of Rs 2,00,000. [8 (2)]

Children Staying with Unrelated Adults

Three months from the commencement of this Act, any adult staying with an unrelated child is required to register with the Director, Women and Child Development. If the Director deems necessary, he/she will authorise the District Inspection Team to inspect the case and submit a report with recommendations. Failure to inform the director can attract a fine of Rs 1 lakh and (not and/or) imprisonment of one year. [8 (4-9)]

All hotels and establishments are expected to see that their premises are not used for the commercial sexual exploitation of children. [8 (10a-d)]

Facilitating the Sale and Abuse of Children

Anyone who facilitates the abuse of a child by soliciting, publicising or making children available for their commercial exploitation will be viewed as engaging in unlawful activity. This includes hosting web-sites, taking suggestive or obscene photographs, soliciting customers, guiding tourists...or any other form which may lead to the abuse of a child. [8 (12)]

The sale of children or aiding or abetting the sale of a child in itself is an offence and can be punished for a period of three years extendable to seven years and a minimum fine of Rs 1,00,000. [8 (13)] A detailed clause is devoted to describing what is meant by the sale of a child. [8 (16 a to e)] This will help in prosecuting those who engage in the trade of babies. Around six years ago when *Bailancho Saad*, a women's collective investigated a case of a baby being sold by a hospital, they were rudely shocked to find that while the sale of a child for sexual trafficking was a crime, the sale of a baby in itself was not recognised as a crime by law.

Trafficking of Children

The law authorises airport authorities, border police railway and traffic police to report any case of adults travelling with a child/children in suspicious circumstances or any suspected case of trafficking. Such adults maybe detained for questioning at the nearest police station. [8 (15)]

Anyone who exploits a child for commercial sexual exploitation shall be liable to pay a penalty of upto Rs 1,00,000 and simple imprisonment of up to seven years (in addition to any other penalty that is attracted by any other Act in force). [9 (4)]

Responsibility of Photo Studios/Film Processing Units

It is the duty of all photo studios and developers of films to report to the officer-in-charge of the nearest police station in case they find that photos/films developed by them contain sexual/obscene depictions of children. Failure to report will result in a minimum sentence of one year and/or a minimum penalty of Rs 50,000. [8 (14)] This law can serve to apprehend paedophiles like Freddy Peats who was found in possession of 2,305 pornographic photographs, many of which must have been taken over the 10 years that he operated his racket.

The Children's Court

The Children's Court was envisaged as a way of ensuring that the trial process was less traumatic for the child. The present Children's Court is located on the first floor of Shram Shakti Bhavan, conveniently located near the Panaji bus-stand. A judge who is a sessions court judge presides over the court. All the professionals involved, including the judge, are required to come to court in civil dress.

The physical appearance of the court is pleasant as the regular dull government colours have not been used. There is a curtain to separate the area where the trial proceedings take place from the rest of the court room. The offender sits behind the curtain. He/She is thus able to hear what the child victim says without being seen by the child. Only NGO members are allowed in court. A support person is allowed to be with the child provided he/she is not a witness in the case being heard.

Unfortunately, there are still a few shortcomings:

- First of all there is no room for the child to sit while she waits for her case to come up. She/he often waits in the passage outside the court room along with the offenders. Presently the toilet is not near the courtroom.

- The courtroom has only one entrance. As a result of this the child and the offender have to use the same entrance. This also means that if the child wants to use the toilet or go out for a break during the trial he has to walk past the offender/s seated in the courtroom.

The Secretary (DWCD) announced that there were plans afoot to shift the court to the Mercedes compound where the government home is located. This is not a place with easy access and will cause inconvenience to witnesses required to come to court.

Political will is required to ensure the implementation of the Act.

Recommendations

- A time limit requires to be set for the implementation of the Act and for rules of all sections of the Act to be formulated.
- As the State Commission for Children is mandated to implement the UN-CRC it could work with the State towards the implementation of the Act, prioritising the implementation of certain issues, such as the setting up of Victims' Assistance Units. Alternately the competent authority could facilitate consultative meetings of different governmental and voluntary agencies to expedite formulation of plans of action and other provisions of the GCA.
- The State Children's Fund be created for the implementation of the Act.
- The prosecution and police need to examine how to best utilise provisions of the Act to ensure that offenders do not go scot-free. In the case of paedophile suspects the provision that an adult staying with unrelated children is an offence should be utilised.
- Victims' Assistance Units be comprised of multi-disciplinary professional teams. These could be located within the government hospitals and be comprised of a doctor, a trained social worker, a lawyer and a police officer who are mandated to work in the unit as a part of their professional work.
- The Children's Court should be located at a place which is accessible.
- The Children's Court should have a special entrance for the child where she can enter the court room without seeing the accused and similarly can go to the toilet or waiting room without passing the offender. A special room near the courtroom which has toys, a cot and chairs and an attached toilet is essential.
- Orientation be given to those appointed on the various committees or as special officers about the provisions of the GCA and their role in implementing the Act.

Child Protection For Children In Goa

Anita Haladi, Goa State Commission for Children¹

Goa, a small state on the western coast of India has become immensely popular the world over as a tourist destination. Socio-economic indicators in government documents present a view that Goa is one of the best in India in so far as human development indicators are concerned. However, even cursory observation would suggest that there are problems that are ignored by the government and people due to factors that are often dismissed as transitional and minimal.

In 1994, I was commissioned by an NGO (The Indian National Social Action Forum), to research into the needs of underprivileged children in the State. The underlying purpose was to eventually bring together the community and the government in finding solutions that would begin to build what we termed as an adequate response to the needs of underprivileged children in Goa. My research was a journey towards understanding the extent and dimensions of problems of children whose basic rights as defined by the UNCRC are either denied or under threat. My research involved spending hours with children who are out of school, working in the unorganized sector to support themselves and their families. These are children who have accompanied their parents/relatives/agents of employers to Goa in search of employment in order to escape poverty and hunger. As part of the same study, we also reviewed institutional mechanisms that provided services to children with special needs (facilities for education and health). In the absence of any study or data, we also tried to understand the problems of underprivileged children by locating their concerns in the context of child labour, child abuse and the commercial sexual exploitation of children. Our study identified groups of vulnerable children and brought out recommendations that could be used by the government and the community to protect the rights of all children, especially those whom we identified as “children at risk”.

Since the 1970's Goa has attracted a large number of unskilled/semi-skilled workers from other states in India largely to the non-availability of manual labor within the state. Developmental activity initiated by the State and the booming tourism sector, continue to create a demand for more people who contribute significantly to its economy. Today, one-third of Goa's population consists of 'migrants' (people who have made Goa their home). The children of these workers are denied of an opportunity to enroll in formal schools, are denied basic health care and along with their parents lead a marginalized existence that threatens their right to a safe, loving and secure environment.

Children of women and families who are trafficked into Goa for either labour and/or sexual exploitation, children who are trafficked into the state for either domestic work/other forms of labour (including begging) or commercial sexual exploitation, victims of abuse, children affected by HIV/AIDS or other terminal illnesses, or children whose parents are affected by HIV/AIDS/terminal illnesses, children belonging to the SC/ST communities, children of families who are living below the poverty line and/or who are unemployed, children in private or government run homes/institutions, children who are unable to enroll in school or who drop out, children affected by natural disasters like floods, children affected by displacement (due to demolitions or due to developmental projects), children with disabilities, girl children, children affected by domestic violence and abuse, children who are abandoned by their families or who are abandoned by those who bring them into the state, children of prisoners, children whose parents are either alcoholics or substance abusers, children from broken homes, children who belong to single parent

¹Anita Haladi is a child rights activist and presently the Vice-Chairperson of the Goa State Commission for Children (constituted in November 2004), her contact details: email id a_haladi@rediffmail.com and mobile number is 09890206637, # 4/S-2, Models Estate, Phase II, Caranzalem, Goa 403002, India.

families or are born to unwed mothers, children living in areas affected by communal riots.....all of whom do exist in this state but whose numbers and problems have escaped the attention of statisticians/researchers and policy makers, constitute a significant number of children who are urgently in need of protection.

We were able to submit to the government and to the people of Goa a report of preliminary findings based on qualitative/participatory research in March, 1995. The Government at the time was quick to dismiss the findings as alarmist and insignificant as these children (i.e. those identified as child workers, children who were victims of abuse and those who were in conflict with the law) were not from Goa!

Some of the major findings of the study were:

- A majority of child workers (both boys and girls) belong to families that have migrated to the state in search of employment due to extreme poverty and displacement. A small percentage of children also consist of those who are orphans or from broken homes and who have run away from home and have come here in search of work. In addition to this, there are agents who bring children and women into the state to work as domestic labor.
- Children are mainly employed in the unorganized sector where they are engaged in selling plastic bags/fish/vegetables/fruit in the markets, rag-picking, off-loading fish and vegetables from trucks that come to the main markets, as domestic workers, at construction sites, in garages, in shops as sales persons or helpers, in small hotels and restaurants, as shoe-shiners, selling peanuts/beer/handicrafts to tourists, as masseurs on the beach, as sand-sifters along the coast where sand is loaded for the construction business, on fishing trawlers, as gymnasts who entertain passersby and tourists, in fish processing units, as beggars, and in so many other kinds of work in order to sustain themselves and their families.
- Though a small number of these children do go to school, most of them do not consider schooling as feasible as they find it very difficult to cope with the formal system of education. A majority wishes to go to school but is denied the opportunity as they do not “fit” into the system.
- The enrolment of girl children in formal schools is far lesser than that of boys and they drop out earlier either due to domestic responsibilities or because their families do not consider it feasible to invest their limited resources in educating them. Safety concerns are also important in preventing girl children from accessing formal education.
- In addition to poor working and living conditions, these children are vulnerable to abuse from their own family, the police, the tourists, pedophiles, their employers and even from the ethnic community that views them as outsiders and hence a nuisance.
- These children have poor access to health care and a significant number are malnourished and are prone to alcoholism and substance abuse.
- Child workers often turn to substance abuse and alcohol as a route to escape and endure the problems they encounter.
- Most of the children were unaware of health facilities and were unsure about how to access these.

In a period of ten years after the study was brought out, several NGOs have come up in Goa who have made child rights their primary concern. Programmes initiated and managed by these NGOs have gained acceptance from both the community as well as from the government. Since 1995, several groups have been working on prevention of abuse with children in formal schools all over the state as well as in open schools meant for out of school children. Goa like the rest of India has a 24 hour toll free phone help line service that

reaches out to children in distress, groups work on prevention of trafficking of minors into prostitution, rehabilitation programmes for victims of trafficking and abuse, conduct awareness programmes about child rights in schools and with Parent Teacher Associations, are working on advocacy programmes to counter declining sex ratios in the state, law schools provide free legal aid and counseling to victims and their families, organize protest marches to highlight the need for speedy justice and are working on creating preventive mechanisms to counter child abuse.

The movement to protect and promote the rights of children in Goa that had a modest beginning ten years ago has now become a state-wide movement that may have been initiated by a few but has managed to include scores of people from all walks of life...Some open schools are run entirely by groups of people who teach children in slums, at railway stations, in unused garages or in government schools with special efforts to identify and reach out to children who are unable to access educational facilities available in the state. In this manner, we have been able to involve the community in finding solutions that can address the needs of children who are not only out of school but have been victims of pedophiles, physical and emotional abuse. Working with the local community has helped all of us to understand their special needs and to accept that “All Children are Our Children” and that the community as well as the Government has a responsibility towards protecting and promoting their rights!

The enactment of the Goa Children's Act, 2003 has been the result of continued efforts of individuals and NGOs who have been campaigning and advocating for the creation of a Goa that is both informed and proactive in protecting the rights of all children.

The Goa Children's Act envisages protecting all children from all forms of exploitation. The Act recognizes that the rights of children are non-negotiable and that Goa becomes a child-friendly state. Protection as well as promotion of children's rights is what initiated the process of formulating and implementing a legislation that has aimed not only to plug the loopholes in existing legislations/policies, but has actually taken a step forward by putting the onus of child protection on all sectors of society. More importantly, it has also placed the onus on the government to create the necessary mechanisms that ensure child protection along with mechanisms to detect and penalize violations of child rights.

RECOMMENDATIONS:

For child protection to become a reality, the government has to put in place all the mechanisms listed in the Goa Children's Act and also create additional mechanisms that ensure that we truly become a child-friendly society. In order to do this, we have to put in place the following:

Collect disaggregated data on all groups of vulnerable children in the state.

- Train and sensitize all levels of the law enforcement mechanisms in the state of Goa- about child rights and child protection...make them internalize the responsibility that we all share....i.e. to ensure that the rights of all children are protected.
- Create mechanisms to ensure that all public places and institutions that are entrusted with the care of children are made aware of their role and responsibility in child protection.
- Set up child committees at the village level and at the municipal level in order to take the responsibility of child protection to the community in a participatory manner.
- The Government should review the implementation of the Goa Children's Act periodically and ensure that limitations that are either real or perceived as barriers to its effective implementations are corrected.

- Complete the process of registering all children's homes in the state on a priority basis
- Create a broader role for the District Inspection Teams to regularly monitor the functioning of all children's homes.
- Maintain a register of all children who are admitted to children's homes and set up a monitoring mechanism that ensures that these children are protected from all forms of exploitation.
- Set up a regulatory body that monitors all adoptions in the state.
- Enact a uniform law for adoptions in the state.
- Train and sensitize all those who take up the responsibility of child protection in existing mechanisms (child village committees, special officers under the GCA, members of the Goa State Commission for Children, police who work with the Women and Child protection Unit of the Goa Police, members of the proposed Anti-trafficking cell, members of the Child Welfare Committee and the Juvenile Welfare Board, public prosecutors who are appointed to the Children's Court, and, members of policy making bodies either in government departments or those in charge of specific ministries at the state level
- Train and sensitize the tourism sector at all levels, the Builders' Association, Members of the PTA's and the Head master Association across the state about the provisions of the GCA and on how they could effectively partner with the Government and other sectors to ensure child protection
- Put into place a monitoring mechanism at all entry points into the state to rescue trafficked children.
- Set up an inter-governmental mechanism with neighboring states that can effectively combat child trafficking and also help in rescue and rehabilitation.
- Effectively implement the PCPNDT Act.
- Create a mechanism of registering and regulating all pre-school/child care facilities in the state.
- Train all pre-school care-givers and educators including the ICDS functionaries.
- Periodically assess the implementation of the Sarva Shiksha Abhiyan in order to broaden its outreach more effectively.
- Set up day care centers for children of single or working parents which are staffed with trained persons
- Set up counseling centers at every educational institution.
- Strengthen the infrastructure and services at all state-run institutions in order to make integration and rehabilitation possible in a meaningful manner.
- Set up the Victims Assistance Unit as envisaged under the GCA.
- Ensure that the provision of banning corporal punishment and zero-rejection in schools becomes a reality
- Set up mechanisms to prevent and monitor cases of child abuse across all educational institutions in the state.

- Translate the Goa Children's Act into the local languages and make it mandatory for all government departments as well as the PRIs to disseminate information about its provisions.
- Set up an inter-departmental committee consisting of senior government officers in charge of policy making to periodically review and monitor the implementation of all schemes meant for children and also to monitor the progress in the implementation of the GCA. (This has already been done on the basis of recommendations given by the GSCC)
- Set up a working committee of representatives of concerned government departments, of NGOs, members of all individuals appointed on various committees under the GCA in order to review budgetary provisions for child welfare and child protection so as to make recommendations for appropriate budgetary support for child protection.
- Prepare a plan of action for rescue and rehabilitation of child workers before implementing the Notification to implement the ban on child labour in domestic sector, hotels, dhabas and recreational centers that is to be effective from the 10th of October 2006.

Tourism and Child Abuse: The Challenges to Media and Industry, International federation of Journalists

Introduction

The conference is a joint initiative of the IFJ and Press Wise to bring together journalists, media professionals, educators, tourism industry representatives and representatives of the workforce to discuss the role of media in combating child sex tourism and to prepare training materials that will assist journalists to produce high quality journalism when reporting violence affecting children¹.

The IFJ project Reporting Dilemmas: Journalism, Child Rights and Sex Tourism aims to highlight the need for ethical and professional performance in reporting the commercial sexual exploitation of children through sex tourism.

One of the objectives of the project is to develop a common approach between journalists' groups and trade unions covering the workforce in the travel industry on joint information strategies to combat sex tourism.

At the same time a discussion is taking place within the journalistic community of how to respond to the challenge of reporting measures to combat child sex tourism in a professional, informed and comprehensive manner.

The Press Wise pilot project Children, Media, Violence in an Expanding Europe is designed to develop and test guidelines, training materials and training techniques for media professionals to improve the quality and sensitivity of media representations of violence, especially violence affecting children.

The project aims to develop relevant training materials for use in the Czech Republic, France, Spain and the UK, with a view to their implementation within vocational and in-service training across the expanded European Community. Taking as a starting point the IFJ Draft Guidelines on coverage of children's rights, the project has:

- developed guidance for trainers in the preparation of materials;
- commissioned annotated bibliographies of research into violence, media and children;
- held a two-day seminar examining the effects of trauma - physical and sexual abuse, violent crime, war, natural disasters - on children, and the problems faced by journalists in covering such stories.

- held a two-day seminar on the development of training modules for journalists.

Before the end of 2000 the project will have tested and refined these materials among journalists in the four countries, with a view to encouraging the introduction of sensitisation to such issues within vocational training schemes. Both issues - child sex tourism and violence and children - pose ethical challenges and dilemmas to journalists. A joint approach to develop guidelines, training materials and joint actions with the tourism industry will result in improved coverage of these issues and can make a difference to the fight against child sex tourism and violence against children.

¹This meeting is a joint activity of two projects currently supported by the European Commission. These are Children, Media, Violence in an Expanding Europe and Reporting Dilemmas: Journalists and Child Sex Tourism, both of which are supported by The International Federation of Journalists and The PressWise Trust. The conference is sponsored by the European Commission: Source of the information <http://www.ifj.org/default.asp?index=191&Language=EN>, Brussels, and September 29th - October 1st 2000

Background

Growing concern about rights of children at national and international governmental level has in recent years tested the resolve of governments to implement international agreements designed to end the exploitation of children. The UN Convention on the Rights of the Child is already the most widely recognised of any international agreement. Concern over child labour, child prostitution and the civil rights of children are a benchmark by which any nation's commitment to human rights and democracy can be judged.

Raising awareness about the rights of children and the promotion of children's rights is a challenge to media and those who work in journalism. Media must not just report fairly, honestly and accurately on the experience of childhood, but they must also provide space for the diverse, colourful and creative opinions of children themselves.

But respect for children's rights is not guaranteed by goodwill alone. The pressures of commercial development, cultural diversity and a global economy that gives easy access for a rich minority to regions where people are struggling to emerge from appalling conditions of poverty and colonial exploitation all continue to define the process by which child rights are implemented.

Child sex tourism is one area particularly recognised as requiring greater action at international and regional level. The role of media is crucial in promoting travel and the richness of the tourism industry. Tourism is the world's leading economic sector and this means that all countries compete to lure visitors. The problem is that in many regions, particularly South Asia and South East Asia, sexual exploitation and particularly the exploitation of children is an unpleasant by-product of the explosion in tourism.

It is an issue that involves many players - journalists and media, travel agents and tourism companies, airlines and travel services, hotel and restaurants and entertainment providers. Until now, there has been little co-operation between these different players in seeking to raise awareness on the issue and in taking practical steps to combat the form of exploitation. In preparing this project, the IFJ aims to promote new forms of partnership to combat child sex tourism. In particular by,

1. Developing guidelines for journalists in Europe and the regions which highlight the need for ethical and professional performance in reporting the commercial sexual exploitation of children through sex tourism;
2. Supporting a common approach between journalists' groups and representative trade unions covering the workforce in the travel industry on joint information strategies to combat sex tourism;
3. Initiating a professional dialogue between media specialists in travel and tourism and social affairs journalists on the need for a common approach to professional values in addressing the issue of sex tourism;
4. Organising a European-wide discussion between the tourism industry, media specialists in travel and representatives of the industry workforce on actions required to enhance media performance in coverage of actions in defence of children subject to sexual exploitation.

In the preparation for this conference concerned organizations have been involved in two important discussions.

The first, in January 2000, brought together industry workforce representatives, media specialists and journalists' groups to consider strategies for extending journalistic sources of information and developing a common approach to actions to combat child sex tourism.

The second, held in August 2000, involved experts from two key areas of journalistic expertise: travel and tourism specialists and correspondents covering social affairs, including rights of the child, with journalism educators. The exchange focused on ways of improving inter-media liaison on coverage of sex tourism issues in Europe and looked at priorities for raising awareness within journalism training structures in Europe.

These meetings agreed that action is needed in a number of key areas to raise awareness of child sex tourism issues, to promote inter-industry liaison on ways of combating child sex tourism, and reinforcing guidelines for journalists on sex tourism questions. Some draft recommendations are contained within this report.

One aim of our meeting is to prepare a text for European journalism associations and unions, media organisations and journalism training establishments that will identify standards required for sensitivity and ethical reporting related to sex tourism and the commercial sexual exploitation of children.

It is hoped that this text will be published and disseminated to media and journalists' associations and unions in the major European union languages

The crucial issue is to raise awareness. Journalists themselves are too often ignorant of child rights issues and unaware of how media contribute, often unknowingly, to the commercial process that encourages sexual exploitation of children.

The preparatory meetings found that existing efforts to combat child sex tourism are virtually unknown inside journalism. The existence of the World Tourism Organisation Globe Code of Ethics for Tourism, for instance, which was adopted in Chile last year, remains largely unknown inside journalism, even within the high-profile circles of travel journalism. The WTO code states:

Article 2 (2)

"Tourism activities should respect the equality of men and women; they should promote human rights and, more particularly, the individual rights of the most vulnerable groups, notably children..."

Article 2 (3)

The exploitation of human beings in any form, particularly sexual, especially when applied to children, conflicts with the fundamental aims of tourism and is the negation of tourism, as such, in accordance with international law, it should be energetically combated...and penalised without concession by the national legislation of both the countries visited and countries of the perpetrators of these acts, even when they are carried out abroad."

This Code and its contents was the subject of detailed review and discussion in Israel a few days ago organized by the World Tourism Organisation, focusing on implementation of the aims of the code;

At the same time the IFJ and its member organisations have spent some time in framing guidelines for journalists that set out practical lines of professional action and consideration in the area of child rights. These guidelines were adopted at a conference in Brazil two years (see below).

One issue to be considered at the meeting will be how effective are codes and guidelines and what actions need to be taken to enforce the worthy ideals and aspirations of such texts.

Strong commercial motives, primarily the need to win audiences and advertisers, influence the content of mass media communication and this is particularly true in the area of tourism, one of the world's richest industrial sectors. Advertising is also subject to a combination of legislation and self-regulation in the way it appeals to children.

It is impossible to properly consider action without examining the commercial pressures on the industry at all levels. There is a need for investment in strategies that will expose commercial sexual exploitation and, by doing so, reinforce public confidence in tourism.

At the same time efforts continue to set standards in the existing world of media technology, the development of new forms of communication such as the Internet open up opportunities for paedophiles and pornographers that raise international concern. The major problem in controlling Internet material is that nobody controls it. However, recent action against pedophile networks show that online services are no safe haven.

The online world provides great opportunities for sexual predators to exploit children. All sides of the discussion related to sexual tourism need to consider how to establish standards and strategies that protect children and empower young people themselves to exercise more control over the on-line world.

The Challenge to Journalism

Whether it is news and current affairs, or the more complex world of the creative and performing arts, all media professionals and the organisations for which they work have a responsibility to recognise that children's rights concern them.

But how do we raise awareness? To answer this question requires serious examination of the way media work, of how existing principles of accountability apply, and how media must be freed from reins of political and economic control which limit professionalism and undermine ethical standards.

Irrespective of external pressure, the media role in the evolution of children's rights is complex. On the one hand, news media tell the stories of abused and abuser, through news reports, photographs, documentaries, and drama. But on the other, they can themselves become the exploiter, for instance by creating sexually provocative images of children in news or advertising, or, at worst, as the vehicle for child pornography, or sources of information for pedophile networks, something of particular concern in the age of Internet.

Furthermore, the way the media portray children has a profound impact on society's attitude to children and childhood, which also affects the way adults behave. Even the images children themselves see, especially of sex and violence, influence their expectation of their role in life.

Media professionals need to consider these questions, even if there are no easy answers to complex issues or to ethical dilemmas. There are standards and benchmarks by which media can judge how they portray children in society. In the conclusion of this section are a number of practical recommendations intended to make media and journalists more responsive and to encourage debate within media about the portrayal of children and their rights. Looking particularly at child sex tourism, internal editorial arrangements within media sometimes are sometimes an obstacle to good coverage and better understanding of issues. In most established and mainstream media travel journalism is an important area of editorial activity. But it is organised quite separately from the editorial departments dealing with social policy and rights of children. Journalists in these two areas of work rarely meet.

As a result, while the travel department of any media organisation adds strongly to the advertising and commercial strength of media, very rarely does travel journalism draw attention to the problems of child sex tourism. Too little attention is paid to the predatory nature of commercial sexual exploitation in many exotic destinations.

One challenge is to examine how editorial practice can be improved to bring social and children's issues into the framework of travel reporting.

The important role that media play in raising public awareness of children's rights is well understood, but journalism is an ambiguous partner. While media help to uncover cases of abuse of children and their rights and to raise awareness of the problem they also infiltrate the public with tolerant attitudes towards child pornography and prostitution or provide the means (for example advertisements) by which gratification may be achieved.

Journalists need to be aware of the consequences of their reporting. Sensational coverage often distorts and exploits a serious problem, perhaps doing more harm than good, but often the response of editors will be that they are trying to fulfil the responsibility to cover serious social issues, while continuing to turn a profit. Sensationalism, they argue, permits an important but unpleasant topic to be covered in such a way that it still captures the readers' and viewers' attention.

However, this does not answer the need for more analysis of the social and economic causes of commercial sexual exploitation of children: the corrupt employers, the pimps, the drug culture, the parents in poverty who are proud to have sold their children for a sum which will enable them to support the rest of the family.

Nevertheless, media can broaden the scope of reporting. The positive story of children, their lives and their rights is not being told in full. To examine how this can be changed requires examination of the professional conditions in which media work, a review of the principles or guidelines journalists and programme-makers should follow, and the obstacles legal, financial, or cultural - that stand in the way of good journalism.

A starting point for good reporting is freedom of information. Journalists are only ever as good as their sources of information. Reporting on child rights and tourism requires access to a great deal of information about children, much of it held by the state authorities. Media cannot report effectively if information about education, health, employment, development and social conditions is not made generally available. In too many countries, governments and state institutions are secretive and hoard information. Citizens have a right to freedom of information. Without it, media cannot report accurately on the reality of children's lives.

Respect, too, for independent journalism is an essential condition for a media culture of openness about children and their rights. For example, journalists recognise that betraying sources not only inhibits their own ability to investigate; it also makes it more difficult for every journalist to work, and may even put their lives at risk, as well as the safety of the informants. Many of the professional obligations of journalists are set out in codes of professional conduct. But how effective are voluntary codes and guidelines? The simple answer is the same as that for all forms of self-regulation - it depends upon the professional confidence of journalists, their knowledge of the issues they are dealing with, and the conditions in which they work.

A recent world-wide study of codes carried out by Presswise for the IFJ reveals that journalists' organisations until recently had few specific codes of good practice for covering the rights of children. To remedy this in May 1998 the International Federation of Journalists launched the first international guidelines for journalists covering children's rights at a conference attended by journalists from 70 countries. Regional discussion on these

guidelines have already taken place in Latin America and Africa and further consultation is planned in Asia with a second world conference to take place in 2001.

The aim of this code - which is attached to this section - is to ensure accuracy and sensitivity among journalists when reporting on issues involving children. The code gets to the core of people's concerns when it comes to how media deal with the children, including: sexual, violent or victim-focused programming and images that are potentially damaging to children; stereotypes and sensational presentation of journalistic material; media failure to consider the consequences of publication and to minimise harm to children; respect for the privacy of children and protection of their identity unless it is demonstrably in the public interest; the need to give children access to media to express their own opinions; the obligation to verify information before publication. The challenge to journalists and media in addressing these problems is to be aware of their responsibilities and to promote improvements. While codes cannot guarantee ethical reporting, they do identify the professional dilemmas that journalists and media face when reporting on the rights of children.

Fierce commercial competition is one factor leading media to exploit victims. The exposure of emotions and sensationalisation of events attract audiences and sell news. Cash-conscious media organisations apply greater pressure on news teams for productivity. Journalists, therefore, sometimes take the ill-considered, easy route to newsgathering, perpetuating the sorts of myth and stereotype identified above.

But in all this there are many examples of good journalism that act as a counter-weight to media indifference and lack of awareness. There is a need for media to identify good practice, to applaud high standards and to encourage improved coverage. Journalism prizes, organised at national, regional and international level can do much if they are used to stimulate debate and dialogue.

Recommendations For Raising Awareness in Media and Promotion of Action to Combat Child Sex Tourism

Media professionals need to develop strategies that strengthen the role of media in providing information on all aspects of the children's rights, but particularly dealing with child sex tourism.

The following recommendations are designed to raise awareness about the importance of this issue:

1. Training for journalists and Media Education
 - a) Materials outlining the Convention on the Rights of the Child and its implications for media as well as examples of good practice within media can form the basis of training courses and manuals for journalists and other media professionals.
 - b) Training seminars focused on issues related to violence against children and commercial sexual exploitation of children, including through tourism, should be organised to raise awareness within media of these issues.
2. Creating the Conditions for Professional Journalism
 - a) Industry partners, workforce representatives and tourism authorities should work with media and other civil society groups to create the conditions for legitimate journalistic inquiry and monitoring of how children can be adversely affected by tourism arrangements.
 - b) Media professionals should recognise that freedom of expression must go hand in hand with other fundamental human rights, including freedom from exploitation and intimidation. They should give careful consideration to the facts when weighing up the relative merits of the different claims, and not allow themselves to be swayed by commercial or political considerations;

- c) Dialogue between media organisations, journalists, the tourism workforce and industry representatives should be supported to highlight problems and concerns and better understanding of the needs of journalists and media when reporting children's issues related to tourism.
- d) Structures for Dialogue involving industry, the workforce and media should include a process of regular review of Codes of Ethics and Journalistic Guidelines to ensure that they are effective and enforced.
- e) National NGOs, workforce organisations and industry representatives should consider compiling a directory of reliable experts on the rights of children and related topics, to be distributed to media. Such information could also be accessible on computer data banks.

3. Codes of Conduct and Self Regulation

- a) Codes of conduct and reporting guidelines can be useful in demonstrating that something needs to be done. Specific guidelines on child rights reporting, such as those adopted by the IFJ, should be drawn up by professional associations to accompany their general ethical codes and should draw attention to issues regarding violence against children and commercial sexual exploitation.
- b) Journalists and programme-makers have a duty to increase public awareness of the violation of children's rights. However, reporting needs to be carried out with enormous care. In particular, media should adhere to the highest standards of professional conduct when reporting on the rights of children.
- c) They should avoid, or challenge, the myths and stereotypes that surround children, particularly those from developing countries. For instance, the myth that parents in developing countries do not value their children; that girls are inferior to boys; that children are drawn into crime through their own fault; or that child labour and sex tourism alleviate poverty for the victim, or the host nation.
- d) Journalists should never publish details that put vulnerable children at risk. Journalists should take particular care not to reveal information that damages the dignity of children, and avoid identifying them, while at the same time telling their stories in a compelling and newsworthy way.

4. The Need for Newsroom Debate

- a) A constructive and supportive debate should be encouraged between media professionals, about reporting of travel and tourism and children's rights and media images of children. Such dialogue should take place between media managements, editorial departments and marketing sections.
- b) Media organisations should consider regular review of travel coverage and set it in the context of coverage of social policy as it affects children both at home and abroad. This issue should be put to specialist 'children's correspondents', or journalists with responsibility for covering all aspects of children's lives.

Brussels, September 29th - October 1st 2000

This meeting is a joint activity of two projects currently supported by the European Commission. These are Children, Media, Violence in an Expanding Europe and Reporting Dilemmas: Journalists and Child Sex Tourism, both of which are supported by The International Federation of Journalists and The PressWise Trust.

The conference is sponsored by the European Commission
<http://www.ifj.org/default.asp?index=191&Language=EN>

Child labour continues to be a worldwide problem. According to ILO's Global Report 2006, it affects the lives of 218 million children. This number is probably underreported because many children engaged in domestic or agricultural work at home are not included in the official figure. India has the distinction of the largest number of working children in the world today. Indian official statistics speak about almost 13 million children, but unofficial estimates vary between 60 and 100 million children. This coincides with estimates of NGO's that around 40% of all 250 million children between 6 and 14 years are not in school on a given day. Children find themselves compelled to work because of situations which are beyond their control. The most serious causes of the prevalence of child labour in India are livelihood and poverty as children are economic assets of poor families.

In "Incredible India!" tourism is one more realm that pulls in a significant number of children as child labour. It is common to see children working in abysmal conditions in small restaurants and shacks, selling curios and trinkets, as beach boys and girls, rag pickers, or simply begging rich tourists for money. In hotels, children work as bell-boys, waiters and waitresses, maids, house keeping workers while in catering many serve dishes, are kitchen helpers or dish-washers.

While the debate over child sexual abuse and trafficking in the context of tourism has been ongoing, child labour which undoubtedly exploits a much larger number of children, has not drawn serious condemnation or concerted action by this image conscious industry. We have included in this section "Hell in Hotels" and "Rights and Obligations" both pieces of research to remind us that while the issues remain, advocacy and action has lagged far behind.

The Government of India announced in 2006 on the employment of children as workers in roadside eateries, teashops, restaurants, hotels etc. With this step child labour in the hospitality sector is now categorised as hazardous work under the Child Labour Act.

One and a half years down the line, post the ban, enormous challenges remain in translating the law into practice. We have included in this



Child Labour and Tourism

section concerns from various civil society organizations that a blanket ban without understanding the root causes of child labour would only push the problem underground. This has unfortunately proved true. Available data and estimates indicate that very few cases have been registered on account of this ban. Many children are still being seen hard at work in restaurants, hotels, tea stalls, etc. all over the country. In all this the Ministry of Tourism and the tourism industry has remained conspicuously silent.

Hell in Hotels

Christine Plüss¹

"To wake me up, the manager would pour boiling water over me," said 12-year-old Srinivas to which 8-year-old Prashanth added that if he did not get up early enough, he was administered electric shocks. The horrors brought to light by a police raid on the Ayodhya Hotel were described by the media as shocking, as if they had come straight out of a nineteenth century novel by Dickens. Yet what happened in the Ayodhya Hotel took place in the early 1990s, in the southeastern Indian city of Bangalore. At the instigation and brave insistence of a waiter in the hotel, the police intervened and freed 28 young boys aged 10 to 16 years old, who had gone through hell in the hotel. They had been slaving away fourteen hours a day for a mere pittance, confined in narrow, badly ventilated sheds at night, sadistically tormented at the slightest provocation, beaten with chains, and scalded. No medical treatment was available, and escape was impossible. Most of the boys had only just arrived in Bangalore when they were approached by the hotel's agent. They did not know anyone and were glad to be offered the job opportunity.

The Ayodhya Hotel is not an isolated case. In 1994, when 50 hotels were searched in single area of Bangalore, 56 children were found, ranging from infants to 12-year-olds, and 83 young people aged 12 to 18 years old. Most of them had been forced to work under inhuman conditions. 45 of the younger boys and 75 of the older ones were found in officially registered hotels, the others in unregistered ones. Altogether, these children spoke five different languages, a clear indication that they were migrants from different parts of India. Throughout India, an estimated 500,000 children under the legal minimum age of 15 year are working in hotels, i.e. establishments that provide food and sometimes accommodation catering for a mainly domestic clientele. One study estimated that in Bombay 50,000 of the 3 million employees in the 11,750 hotels, restaurants, cafeterias, etc. were minors. In Bangalore, as much as 40 to 60 percent of employees in this sector are said to be children. Most are boys from rural areas, often recruited by agents who make contracts with the children's parents. This puts the boys largely at the employers' mercy. Many are forced to work in hotels because their parents are in debt or have been given advance payments. Others are recruited by agents when they arrive at bus or railway stations, and they become dependent on a hotelier because they do not know anyone else.

Following the scandal at the Ayodhya Hotel, other catering places in Bangalore were raided and a task force consisting of police, official authorities, and NGOs was set up to keep watchful eye on the situation. It was also made known at this time how much bribe money was being paid to achieve favourable results in registration procedures and inspection businesses. The owner of the Ayodhya, for instance, had already re-opened a hotel in the meantime under his wife's name.

In the mid-1980s, the "Asian Youth Centre" in Madras founded an association for young hotel employees where young boys can meet, obtain advice, and pursue strategies to negotiate collective bargain agreements. Other NGOs, especially in Madras and Madurai, seek contact with young hotel employees, but also with other children involved in tourism, directly at the place of work: on the street, near temples and tourist attractions, etc. They are also trying to negotiate with employers and help young people by offering medical assistance, advice, an training that will allow them to seek an alternative income. The task appears daunting. NANBAN, the Centre for Street and Working Children in Madurai, believes that half of the working minors in Madurai are employed in tourism, among other places behind the walls of the higher-class hotels. The director of ASHA NIVAS, the "Social Service Centre" in Madras estimates that altogether, at least 2 million children in India are seeking to earn a livelihood in tourism.

¹"Quick Money-Easy Money? A Report on Child Labour in Tourism" Christine Plüss, SDC Working paper 1/99, Berne, Switzerland, May 1999: List of case studies and synopses of basic information.

Boys who work in Moroccan tanneries and the leather industry also suffer damage to their health. Some of them already start working at the age of 7, producing goods for export in addition to the fine leather articles ("maroquineries") so prized by tourists. Young girls in Morocco and Egypt who start working in carpet weaving factories from the age of 6 are also exposed to health hazards, bending their backs and grazing their fingers for products that are sometimes bought on the spot by foreign travellers.¹³³

Children and young people who work on the street or the beach are exposed to yet another set of risks. As many studies on "street children" illustrate, the "open-air economy" is not an open space where everybody can move freely. Hierarchies and dependencies between individual groups who lay a claim to this space are often very pronounced; they develop not least of all because of the permanent danger of repression by police and government authorities. Fierce battles are sometimes waged over the sites that are well frequented by tourists. Many of the beach boys in Sri Lanka were introduced to the sex trade by older boys; belonging to a more or less established group is vital if one wants to remain in business. Many children, including most "street children", have had experiences with alcohol and drugs. This is the case for 11 to 12-year-old tourist guides in Fez in Morocco, who offer their services to tourists (usually men rather than women), even supplying hashish on request in order to improve their meagre daily earnings.¹³⁴

Many children in the "open-air economy" are not self-employed entrepreneurs. The young souvenir vendors on the beaches of Kerala in India, for example, complain that they are beaten if they do not bring their employers sufficient earnings each day.¹³⁵ Approximately half of the girls and boys interviewed for the study in Mombasa said that they had been hired to sell souvenirs, that they were being sent by a dealer to the beach, and that they regularly had to give him their daily earnings. Their greatest fear was that the number of tourists would decline. This fear is shared by most of the other young people in similar situations around the world. The end of the tourist season is a difficult time for the beach vendors in Sri Lanka: many have become accustomed to a certain lifestyle. They often accumulate considerable debts during the low season, which they must carry over to the following season. Additional pressure comes from getting older, because the older the children are, the less they are in demand. If they remain on the beach, they may end up fending for themselves by becoming procurers or dealing in drugs.

5.1.3 Loss of schooling and lack of training opportunities

Because young workers in tourism often have only a rudimentary education, they are burdened by insecurity about work and about their future. Many young workers have to leave school even before finding a job in tourism. Others drop out of school when they find work and income on the street or beach. In Sri Lanka, where the high rate of literacy (87 percent among girls and 92 percent among boys¹³⁶) is repeatedly cited with legitimate pride, many children in tourist centres attend school only irregularly during the season after they have turned 10 years old. If one boy succeeds on the beach, as a rule his school friends will soon follow him. Some will drop out of school before they reach the end of their fourteenth year, i.e. the age at which school attendance is no longer compulsory.¹³⁷ The children of the Mzeina, a semi-nomadic tribe in the south of the Sinai, prefer to sell their hand-woven bracelets to backpacking tourists when it is holiday-time in Israel or Europe, rather than go to school.¹³⁸ Most of them are still of school age. Here too, it is obvious that the social costs of child labour in tourism are high – for example, the loss of education. The long working hours in the tourist sector alone often make it impossible for children to continue attending school, even when their hope is to use their earnings to buy books and clothes for school.¹³⁹

Many young people take jobs in tourism because they require no special training or skills. In the long run, this has detrimental effects because they rarely receive proper training on the job that would open up new perspectives for them. In many cases, even

modest vocational training might be helpful. But even in industrialised countries, jobs in tourism that involve vocational training may turn out to be a deceptive way of obtaining a cheap labour force. Recently, a hotelier complained about the quality of training in Austrian restaurants, pointing out that apprentices were used primarily as a source of cheap labour and had little opportunity to acquire the skills they needed.¹⁴⁰ The Ceylon Mercantile, Industrial & General Workers' Union (CMU), the leading union for hotel and restaurant workers in Sri Lanka, estimates that 30 to 40 percent of employees in the formal sector are given casual labour. More and more of them are so-called "trainees", i.e. young apprentices who are under the supervision of the National Apprenticeship Board and are therefore not covered by existing collective bargain agreements which cover 75 percent of employees in the four- and five-star hotels.¹⁴¹ Wages for apprentices are below the legal minimum wage. It is common knowledge in seaside resorts that it is relatively easy to fire "trainees" at the end of the season for "disciplinary reasons", as they do not know how to defend themselves.

Carpet schools in Egypt provide another example of this phenomenon. Children, particularly girls disadvantaged by not having been sent to school, used to acquire some school knowledge while learning traditional handicrafts. But in most carpet schools today, educational opportunities are lacking and children from the age of 6 are exploited many hours a day as an extremely cheap labour force.¹⁴²

5.1.4 Loneliness and fear of an uncertain future

12 out of 13 young people interviewed who were working in the night-life district of Metro Manila said they would prefer another job or would like to go back to school or start a vocational training programme.¹⁴³ Half of the boys and girls on the beaches of Mombasa expressed a desire to complete their school education or receive further training; approximately half would prefer to take advantage of alternative income opportunities. If they could be sure that their lives would improve, they would make a change. But the experts consulted for this report all agree that the low self-esteem of children in jobs like these is a very unstable basis on which to build a better life. Furthermore, often they are migrant children and feel lonely. Many of them suffer from knowing that their former school-friends are still at home and can stay in school, as revealed by a survey of young workers among them restaurant workers in Thailand.¹⁴⁵ Many are homesick and long for their families or friends back home. Many will not succeed in improving their social status by working in low paid ancillary jobs. Thus, the upward spiral of exploitation continues: the lack of a social network makes young people dependent on their relationships within the workplace, i.e. on the bosses they often fear, and on the customers, particularly the tourists from abroad.

Such working conditions are a daily routine for countless children and young people around the world. Their stories are alarming. Seen from yet another perspective, the work of young people in the tourism sector also exhibits characteristics that clearly range this work among the worst forms of child labour.

5.2 Specific risk situations

5.2.1 Sexual exploitation

Many child workers in tourism are at risk of being sexually exploited. Work in tourism involves an occupational hazard of exposure and vulnerability to sexual exploitation because an important part of such work consists of so-called "personal services", where the person and personality of the employee is thought to be part of the service provided. Often enough, guests show no respect for the integrity of the individual providing a service. The enormous social gap that separates tourists and young workers in host countries greatly facilitates such behaviour. Tourists travelling abroad, seeking freedom from the social control they experience at home, often ruthlessly take advantage of differences in age, wealth, gender, and social standing, thus revealing racist attitudes. Sex with children is a

crime everywhere in the world. It constitutes a particularly cruel form of violence. Definitions of the problems, profiles of perpetrators, the consequences for the victims, and the background of sexual exploitation and ways of combating it, have been presented in numerous publications in far more detail than is possible in the scope of the present report. Nevertheless, it is necessary to point out that the sex trade is particularly prosperous in the tourist centres of Asia, Africa, Latin America, the Caribbean, and the former East Bloc countries. Many establishments opened for this purpose are also frequented by local customers. In numerous places, demand from tourists provided the impulse that made sexual exploitation of children into the huge, profitable business that it is today. An ILO study of the economic significance of the sex trade in Southeast Asia,¹⁴⁷ drawing on concrete examples of tourism promotion campaigns in Thailand, the Philippines and Indonesia, revealed that night-clubs and massage parlours were specifically set up to attract tourists. Author Lin Lean Lim points out that "some government officials and businessmen... still feel that the provision of every kind of sexual service, including child prostitution, to foreign tourists is a necessary part of tourist development." Undoubtedly, a considerable share of responsibility for the commercial sexual exploitation of children lies with the tourism industry, even though children are being sexually exploited throughout the world for commercial reasons far from tourist centres.

Under-aged girls and boys who are locked up in brothels or provided to tourists by recruiters or procurers are not the only children working in tourism who suffer sexual exploitation. These extreme forms of exploitation must not divert our attention from the fact that great numbers of young people working in direct contact with guests are exposed to similar abuse and infringement of their rights. The case studies from Mexico, Kenya, Sri Lanka, and the Philippines presented in the ILO report *In the Twilight Zone* reveal that many girls and boys who eventually work as prostitutes started off as waiters and waitresses, room-girls, tourist guides or beach vendors. Although in some countries work in the entertainment industry falls into the category of occupations hazardous to health and morals, and is limited by legal minimum age regulations, ⁴⁸ these regulations are ignored in many places. Furthermore, not all young people have jobs that can be directly classified as part of the entertainment industry. Children involved in tourism occupations requiring personal services need increased protection and appropriate prevention to keep their careers from ending in sexual exploitation, and consequently in discrimination, life-long trauma and loss of self-esteem, venereal diseases, or HIV infection. The gender issue is particularly relevant here, as girls are clearly more often affected. But recent research increasingly reveals that boys are also victims of sexual exploitation and suffer very specific consequences.¹⁴⁹

However, tourists are not the only perpetrators. Employers may exploit their young employees, as if sexual services were an integral part of the job. Newly recruited children are raped by their recruiters, young beach boys by older ones. Sexual violence runs through the testimonies collected for this report in a disturbingly pervasive way. Whether it is perpetrated for commercial reasons or not, sexual violence and its serious consequences are both an expression and an inherent part of an entire system of exploitation that must be urgently recognised and combated as such.

5.2.2 Slavery and forced labour

The UN Working Group on Contemporary Forms of Slavery has clearly defined commercial sexual exploitation as a contemporary form of slavery. Several cases compiled for the present report provided evidence of other forms of forced labour or debt bondage. In its relentless drive to develop tourism, the Burmese military regime has forced many children to help construct infrastructure for tourism.¹⁵⁰ The government has consistently maintained that the Burmese population traditionally supports "community projects", and that a poor country can only develop in this manner. Burma may be an extreme case in this regard and with respect to other violations of human rights as well. Nor will children in

Burma be immune to forced labour in the future, in view of the government's ambitious plans for the expansion of tourism.

More attention needs to be given to the recruiting methods used by the Indian "hotels", which target children from indebted families, as they result in employment conditions that are close to forced labour. Not only do such children work under extreme conditions, but the "hotels" often charge them so much for room and board that they are never able to pay back their debts.¹⁵¹

Another source of concern is the situation of the numerous young children who are brought to their workplace from far away. Do such children know where they are, and to whom they can turn in case of need? In Sri Lanka, cases have been documented where children, in complete desperation, turned to the police for help, or were taken away by the police after they had suffered severe abuse as domestic servants in private households or small family businesses, including those in the catering sector.¹⁵²

The ILO maintains that of all working children, those held in slavery and bonded labour must be considered the most endangered.¹⁵³ The cases referred to here clearly show that these extreme forms of labour also occur in tourism.

5.2.3 Domestic service

As previously mentioned, most young people who work in family businesses, whether in the catering industry or the production of souvenirs, remain largely invisible. Reports refer to them in passing, if at all, mentioning perhaps the modest family pensions in Mexico where children make beds, clean rooms, or do the laundry. If they are members of the family, they usually work without pay. If they are young girls who do not belong to the family, they often receive very low wages and no social insurance.¹⁵⁴ In countries as different as Austria, the Czech Republic, the Dominican Republic, and Colombia, there is evidence that children - mostly girls - contribute substantially to family businesses. In the Sri Lankan seaside resort of Hikkaduwa, it is largely the girls who appear to be producing souvenirs at home, as they are traditionally more protected within the family, while boys work in public places and have jobs that are more visible.

The lack of information in this area is a matter of concern. Indeed, 80 percent of employment in tourism is located in medium or small-scale enterprises, often family business. Many activities in accommodation and catering are an extended form of housework. Gender studies in tourism have shown that the workload of women offering accommodation and catering in their own homes, or of farmers' wives who take in guest families on their farms, increases substantially. Such women are only partly remunerated for their efforts through increased revenues and sometimes through greater social prestige.¹⁵⁵ Where it is a tradition for one's own or other people's children to help, it is highly probable that they will have to contribute to carrying the burden of this extra work.

But guests are not only served in the family household. On the small beach of Unawatuna in Sri Lanka, young beach vendors reported that 6 or 7 young kitchen hands were working in the 30 small beach restaurants, and that some of them even had to spend their evenings doing the household chores in their employers' homes. In Hikkaduwa, a social worker found that at least 35 children were working in the more than 140 existing "guesthouses" and restaurants. The young people who helped him collect information thought there were probably more.¹⁵⁶ Many of these working children are not family members; at the most they are remote relations. They are barely visible or entirely invisible to foreign guests. Their activities resemble housework, and may be carried out as part of the family business, but they are certainly of a commercial nature.

According to UNICEF, domestic servants undoubtedly constitute the most widespread form of child labour. Domestic child labour is also the least visible and most hidden form of child labour because private households are beyond the reach of public control, and in many countries, work in family businesses is legal at an earlier age than other types of work.¹⁵⁷ More and more studies point out that this is precisely where exploitation of children is most widespread, whether they belong to the family or not. In many countries, children are assigned to other households for domestic service, if possible to homes in a higher social class.¹⁵⁸ In Sri Lanka, for example, this was once a way for girls as well as boys to achieve a certain degree of education or make a good marriage. But various experts who have analysed changing traditions point out that social control in villages and extended families has disappeared. What remains is discrimination and economic exploitation of children, often including sexual exploitation.¹⁵⁹ In many places people refer to tradition, building a wall around the family. This is the case in Morocco for example, where members of the well-educated upper classes who defend human rights in their country continue to employ children in their households.¹⁶⁰

Often termed "a hidden tragedy", this form of exploitation mainly affects girls, who, at a worldwide scale, still have less access to schooling and often do more work than boys. How long did it take to "discover" the key role of women in the tourism industry? Only systematic studies of this "hidden" area of child labour, both in the catering and souvenir industries, can provide information about the number of young people, especially girls, whose work contributes to the smooth running of the tourism industry.

5.2.4 Children in conflict with the interests of tourism

In the "open-air economy", it is precisely the fact that children and young people are visible which can constitute a stumbling block. Young people who are involved in tourism activities in the street or on beaches on their own account are frequently the victims of repression, often carried out in the name of security for tourists. For example, in view of the 1998 promotion programme "Visit Nepal Year", the Nepal Ministry of Tourism conducted a "clean the street operation" which also targeted the young freelance porter children in Kathmandu airport. Many children were arrested and detained.¹⁶¹ Mexican beach vendors are also repeatedly arrested in Acapulco, where the official local policy towards undesirable "street children" apparently consists of making them as invisible as possible;¹⁶² and young Kurdish souvenir vendors in Istanbul are constantly harassed by the police.¹⁶³

In Mombasa, one study found that young souvenir vendors on the beach greatly feared being pursued by the authorities.¹⁶⁴ Though tourists who were interviewed in the same study were afraid of being robbed, on the whole they sympathised with the children. The hoteliers also showed understanding for the children's difficult economic circumstances and pleaded for time limits on their trading activities on the beach, to encourage them to attend school more regularly. On the other hand, in Pattaya (Thailand) and in the Indian state of Goa, hoteliers are greatly disturbed by the presence of under-aged and adult vendors in the tourist spots. At their request, sales activities of itinerant food vendors in Pattaya have repeatedly been forbidden in certain zones,¹⁶⁵ and in Goa, the government has imposed heavy taxes on food and souvenir vendors because they supposedly soil the beach.

At the time of the author's field mission in February 1998, the familiar figure of the beach boy on Hikkaduwa beach had all but disappeared. Police controls had reportedly been introduced at the beginning of the season. As a result, the trade had moved from a public place to gloomy meeting points and private buildings. This was a matter of great concern for social workers as well as for some of the hoteliers.

5.2.5 Why are children not better protected by law?

As shown by the 1996 ILO report, *Child Labour - Targeting the Intolerable*, practically every country in the world has introduced a minimum age for admission to employment. This age limit varies, depending on the country and the type of occupation. According to tables presented in the ILO report, young people in the Philippines, in Brazil, and in several other countries are allowed to work in the entertainment industry only as of the age of 18 or with the explicit permission of the Ministry of Labour, while in Nicaragua, for example, the minimum age for the same type of work is 14 years. In addition to the age limits by sector, every country has specific labour laws, child protection laws, and regulations regarding compulsory education, apprenticeships, etc. In most countries, forced labour is forbidden by the constitution or by labour laws. As a result of campaigns against the (commercial) sexual exploitation of children, legal reforms have been required or already carried out in many countries, to provide better protection for victims and more efficient prosecution of perpetrators, extending to the international level. Only country-specific reviews by experts can determine to what degree children are actually protected against exploitation in tourism. Such reviews need to undertake close examination of the legal situation of children and young people in the various sectors of tourism. Particular attention should be given to laws that regulate work in family businesses, since in many countries these laws contain exemption clauses that apply to the minimum age for admission to work in households or family businesses, as confirmed by the 1996 ILO report. Control is especially difficult in this area.

When legal prosecution of abusive forms of child labour fails, it is usually due less to lack of legal provisions or loopholes in the law than to insufficient law enforcement. There are numerous reasons for this. To begin with, many children do not have a birth certificate that provides proof of their age. According to UNICEF, this is a very basic problem that could be solved with relatively little effort. When an inspection does take place and doubts about a child's age are raised, an employer can take refuge by claiming that a birth certificate is lacking. It is particularly difficult to monitor observance of labour laws in the tourism industry because many workplaces are located in the informal sector, in businesses that are often not officially registered. Registration is a separate problem: as cases in Thailand, India, and Sri Lanka have shown, it is often a source of corruption. This further complicates the work of authorities responsible for controlling child labour, which is already difficult enough in the informal sector. In many countries, labour inspectorates, which are responsible for controlling the work of minors, are not well equipped for their tasks. Often they lack funds and knowledge about procedures. As several experts in Sri Lanka pointed out, there is also a lack of co-operation between the various official bodies responsible for the protection of children - primarily labour ministries, police forces, and social authorities. Moreover, NGOs, who often have valuable expertise, are too little involved in this area. When a case is brought to court, employers are often in a better position to defend themselves, even if judges advocate children's rights, as experience in Sri Lanka has shown. Nor is lenient punishment of abusive employers an effective deterrent.

In many places, what happens to children who have been freed or removed from exploitative situations remains an unresolved question. If they have not yet reached the minimum age for admission to employment, they are in violation of the law. Will the law now treat them as criminals or victims? Who will guarantee that children in dire economic circumstances receive adequate care, to ensure that they will not be forced into an even more desperate predicament? For example, how can civil law complement criminal law? Are there provisions for punishing employers and suing them for adequate financial compensation? Experience in many countries has shown that freeing children

from exploitation quite often generates new anxieties and traumas. Victims of sexual exploitation are in a particularly difficult position when they are involved in court proceedings, where they are often exposed to detailed questioning by the authorities and confrontation with perpetrators. Are there any centres that offer these young people the help they need to overcome the traumatic experiences they have endured? For lack of alternatives, victims of sexual exploitation in Sri Lanka have been placed in remand and detention homes or in certified schools, and kept there under often poor conditions despite public protest; and Sri Lanka by no means represents the only case of this kind.

The reasons why the law does not offer children better protection must be carefully examined in each country. In the final analysis, the fact that children do not receive better protection reveals the low priority that is actually given to combating the exploitation of children, despite all the public statements to the contrary. This is why many experts, especially in Sri Lanka, believe that raising public awareness of this issue and offering specific training to the authorities concerned must receive the highest priority.

Repression is not only an immediate danger for the children and young people working in tourism; it also drives them further towards the margins of society and exposes them to additional exploitation.

References

- Sources: Source material compiled for this report by EQUATIONS Bangalore, The CHURCHES COUNCIL FOR CHILD AND YOUTH CARE (CCCC) Bangalore, NANBAN Madurai, ASHA NIVAS Madras; The CONCERNED FOR WORKING CHILDREN: Profile of Child Labour in Mysore Division, Bangalore (undated).
- 133 ABU STET, Dahlia/ ELM ALT, Omneha: Schools or Workhouses? Child Labour in the Egyptian Tourism Industry. In: TOURISM CONCERN: In Focus, Summer Issue 1996; INTERNATIONAL WORKING GROUP ON CHILD LABOUR (IWGCL): Child Labour in Morocco. 1996.
 - 134 *ibid.*
 - 135 Project correspondence with Sue Wheat, TOURISM CONCERN, London.
 - 136 DEPARTMENT OF CENSUS AND STATISTICS, MINISTRY OF FINANCE AND PLANNING: Statistical Pocket Book of the Democratic Socialist Republic of Sri Lanka 1997, Colombo 1997.
 - 137 ILO: Child Labour in Sri Lanka. Report of the National Workshop organised jointly by the ILO Office in Colombo and the Ministry of Labour and Vocational Training, September 1996, Colombo 1997.
 - 138 Information from the thesis on the Mzeina in the South Sinai by Heba Aziz, London, 1998.
 - 139 BLACK, Maggie, 1995, *op. cit.*
 - 140 Weltwoche 24.12.1998: Interview with Eduard Hitzberger, hotelier in Ftan (Switzerland), by Beat Wiithrich.
 - 141 Interview with representatives of the CEYLON MERCANTILE, INDUSTRIAL & GENERAL WORKERS' UNION (CMU), February 1998.
 - 142 ABU STET/ ELMALT, 1996, *op. cit.*; GRMSRUD/ STOKKE, 1997, *op. cit.*
 - 143 BLACK, Maggie, 1995, *op. cit.*
 - 144 See the case study in Chapter 2: "Kenya".
 - 145 Bangkok Post 21.6.1997: Results of study conducted by FOUNDATION FOR CHILDREN'S DEVELOPMENT and the CENTRE FOR THE PROTECTION OF CHILDREN'S RIGHTS.
 - 146 See a whole series of references in the bibliography. Further information is available from ECPAT International in Bangkok, and from ECPAT campaigns in many countries all over the world. See the list of web sites at the end of this report.
 - 147 LIM, Lin Lean (ed.): The Sex Sector. The Economic and Social Bases of Prostitution in Southeast Asia. ILO, Geneva 1998.
 - 148 For an overview of minimum ages, see the tables in: ILO: Child Labour. Targeting the Intolerable, 1996, *op. cit.*

- 149 Minutes of the conference on Sexual Exploitation of Children - The First Support Group Consultation after the World Congress Against the Commercial Sexual Exploitation of Children. Focal Point, NGO GROUP FOR THE CONVENTION ON THE RIGHTS OF THE CHILD-DEFENCE FOR CHILDREN INTERNATIONAL, Geneva, January 1998.
- 150 ILO: Forced Labour in Myanmar (Burma). Report of the Commission of Inquiry appointed under article 26 of the Constitution of the International Labour Organisation to examine the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29). Geneva, 2 July 1998; ILO-ACTRAV: Protecting Children in the World of Work. Labour Education 1997/3, No. 108, Geneva 1997.
- 151 Material compiled for the project by EQUATIONS Bangalore, NANBAN Madurai, ASHA NTVAS Madras.
- 152 DE SILVA, Harendra: Child Abuse. The Gravity of the Problem and Dilemmas in Management in Sri Lanka. Dept. of Paediatrics, Faculty of Medicine, Karapitiya, Galle 1996.
- 153 ILO: Child Labour. Targeting the Intolerable, 1996, op. cit.
- 154 BLACK, Maggie, 1995, op. cit.
- 155 GRUTTER/PLUSS, 1996, op. cit.
- 156 Research conducted in February 1998.
- 157 ILO: Child Labour. Targeting the Intolerable, 1996, op. cit. Although it is clear today that a family environment does not protect from exploitation, regulations in this area constitute an extremely delicate issue, since state power intervenes directly at the level of the private sphere of the family.
- 158 UNICEF: The State of the World's Children 1997, op. cit.; BLACK, Maggie, 1997, op. cit.
"" Discussions with experts on child labour and sexual exploitation of children in Sri Lanka.
"" INTERNATIONAL WORKING GROUP ON CHILD LABOUR (IWGCL): Child Labour in Morocco. 1996.
" Press clippings and correspondence for the project with ILO-IPEC Kathmandu, February 1998.
' : BLACK, Maggie, 1995, op. cit.
1 See the case study at the end of Chapter 4: "Kurdish children as souvenir vendors in Istanbul".
14 See the case study at the end of Chapter 2: "Kenya".
5 WAHNSCHAFFT, 1989, op. cit.
66 ECTWT: Contours, Vol. 8, No. 1, January 1998.
Sources: ILO: Child Labour. Targeting the intolerable. Report VI (1), International Labour Conference 86th Session 1998, Geneva 1996;
UNICEF: The State of the World's Children 1997; GOONESEKERE, S.W.E.: Child labour in Sri Lanka: Learning from the past. ILO, Geneva 1993; SAMARA WEERA, Vijaya: Report on the Abused Child and the Legal Process of Sri Lanka, submitted to the National Monitoring Committee on the Children's Charter, Colombo 1997; project source materials from India and Thailand, and information from interviews with various authorities in Sri Lanka, February 1998.

Rights Verses Obligations: Civil Society Responses to Child Labour and Child Abuse in the Service Industries

T. T. Sreekumar¹ and V. Gayathri²

I. INTRODUCTION

This paper is an attempt to understand the dimensions of child labour and child abuse in the services sector with particular emphasis on the travel and catering industry. The expansion of travel industry in the 1980s and 1990s was a direct result of the increased pace of globalization consequent on the economic prescription of international financial agencies for the liberalization of third world economies. The practices of global mass tourism even in its various avatars as eco-tourism sustainable tourism etc. have been callously insensitive to the negative consequences of the growth of this industry. The legal and political structures that monitor the use of resources including land are formulated to favour the interests of commercial lobbies including giant multinational corporations, subjugating the interests of local communities. Beginning with the Uruguay Round of the General Agreement in Trade and Tariff (GATT) negotiations, which culminated in the formation of World Trade Organization (WTO-OMC), the agenda of international processes are influenced and determined by industrial lobbies. The change in the character of trade negotiations in WTO itself is an indicator of this tendency. While GATT was ad hoc and provisional, WTO and its agreements are permanent structures ratified by 'members'. It may be noted that GATT did not have members but 'contracting parties'. Dispute settlement mechanism in GATT was based on consensus where as the rulings of WTO cannot be blocked or challenged by the majority. General Agreement in Trade in Services (GATS), which deal specifically with services, has resulted in the further liberalization of travel and catering industry and contributed to the increased incidence of child labour and child abuse. This paper attempts to study the magnitude and manifestations of the problem of child labour and child abuse in the services sector in India as well as understand the response of civil society to this menace. In the first section of the paper we take a quick look at a possible approach to the question of combating child labour and child abuse in the services. We argue that a rights based approach is often found wanting where as an obligations based approach may be more agreeable given the nature of enforceability of "children's rights" in developing country contexts. The second section discusses the nature and extent of child labour and child abuse in the services. The third section attempts to outline the contours of civil society engagements with the problem of both child labour and child abuse in the sectors with close links to tourism against the backdrop of inadequate judicial and legal interventions. The fourth section provides a critique of the code of ethics of tourism from the point of view of civil society's urge to combat the issue of child abuse. The last section offers certain concluding remarks.

¹ Division of Social Science, Hong Kong University of Science and Technology, Clear water Bay, Hong Kong.

² International Labour Organization, New Delhi

II. CHILD LABOUR AND CHILD ABUSE IN SERVICE INDUSTRIES: AN APPROACH

Child labour in the services industries has always been a vexed one for a variety of reasons. While many of the issues highlighted in the child labour debates can be of utmost significance in the context of services industry, they require several qualifications and caveats in order to be relevant and realistic. Many of the controversial dichotomies that have surfaced in the debate such as work/labour, needs/rights, rights/obligations etc can be of immense heuristic value in the analysis of the specific issues relating to child labour in the services industries. However, they all require modifications and have to be seen from politico-ethical perspectives that illuminate the problems faced by children working in the services sector. Nonetheless, there is no denying the fact that the major contentions of the child labour debate in India such as the need for making a distinction between home based, non-exploitative child labour and factory based hazardous work into which children are pushed due to either poverty or pulled due to the economic logic of patterns of regional industrialization have immediate and close relevance in the context of services sector also. But a line of demarcation has to be drawn on the nature of 'family' labour as well as proneness to hazardousness in the tertiary sector jobs and secondary sector jobs. This is applicable in the case of a distinction between primary sector jobs and tertiary sector jobs as well.

The crucial factor that prompts us to draw a fine line of demarcation between most of the service sector jobs that employ children and the factory based exploitative labour is the uniqueness of the former in terms of the difficulties in identifying the victims of abuse. The hazardousness of the factory work has been a major focus of debate and attention in the literature on child labour. While it is generally agreed that the children working in factories are vulnerable to sexual abuse by employers or adult co-workers, they don't live in a zone of constant sexual threats while the deep links of most of the child labour in the services sector with the travel and hotel industry makes them prone to abuse and sexual exploitation much more seriously than in secondary sector. While monitoring of a factory where children work is a partial solution for containing the gravity of the issue in the secondary sector, such mechanisms are dysfunctional in the spatially de-nucleated travel and tourism and hotel industries with an informally organized nature of work.

Table 1: Occupation, Location and Risk Perception of Child Labour in Travel and Hotel Industry

Sectors	Workplace	Occupations	Risk Perception
Accommodation	Hotels, holiday resorts, boarding houses, guest houses, lodges, bed and breakfast places, rooms in private homes; subcontractors such as laundries, cleaning firms	Receptionists, baggage attendants, bell-boys, lift-boys, chambermaids, room-boys, domestic servants, grooms, porters, garden hands; helpers in laundry and ironing, cleaners	High
Catering food and beverage	Restaurants, cafes, tea shops, snack bars, beer gardens, pubs, bars, beach shacks, street stands, itinerant food vending stalls	Kitchen and scullery helpers, dishwashers, water-carriers, cleaners, waitresses and waiters, delivery boys, vendors of fruit, snacks and ice-cream	High
Excursions, recreational activities, entertainment industry	Excursion sites, tourist sight seeing spots, sport and beach activities, fitness centers, animal shows, circuses, folklore performances, casinos, nightclubs with go-go dancing, massage salons, brothels	Tour guides, vendors of postcards or tickets, flower girls, "photo models", shoeshine boys, beggars, beach cleaners, caddies and "umbrella girls" on golf courses, attendants in surf and diving schools, attendants for pony rides, "Thai boxers", snake and crocodile exhibitors, acrobats, divers for pennies, beach boys, "hospitality girls", "guest relations officers", dancers, masseuses, prostitutes, and procurers	High
Tour operating and transport	Travel agencies, airports, train stations, bus and taxi firms, excursion and transfer boats	Small handling agents, errand-boys, baggage attendants, bus attendants, car washers and guards, ship-boys, deckhands, porters (on trekking tours)	High
Souvenir production	Woodcarving and plastic processing, textile industry, sewing shops, straw and palm leaf manufacturing (mat weaving, etc.), shell, coral and mother-of-pearl processing, carpet-weaving, tanning, leather production, lacquer industry, precious stones mining, gem industry	Manufacturers of all kinds, shell and pearl divers	Low/medium
Selling of souvenirs	Shops, hotel boutiques, stands, itinerant sales activities on streets and beaches	Souvenir vendors of all kinds	High

Source: Adapted from Plüss (1999: 27)

A close look at the types of occupation and spatial location of the work in the travel and tourism industry will further illuminate the argument. The perception of risk associated with ostensibly 'light and affordable, non-hazardous' labour in this sector can be perceived as having a high risk in terms of vulnerability of working children to potential sexual exploitation and abuse. Most of the occupations involve direct contact with adults in private rooms or houses away from public attention and hence the risks of being assaulted/seduced are comparatively higher while the possibility of closely monitoring individuals and children involved either in voluntary or involuntary sex work by state agencies as well as law enforcement authorities are practically impossible. Table 1 summarizes the spectrum of jobs usually available in the travel and hotel industry and the risk perceptions associated with each group of work and workplace. It can be seen that except in the case of jobs characterized as specifically some kind of 'manufacturing', the jobs are mostly exposing the children to high risk in terms of contacts with adults in circumstances that can lead to their abuse and exploitation. These demarcations however are not intended to either support or reject an argument in favour of child labour in the manufacturing.

Two competing perspectives on the question of child labour in the manufacturing have been from utilitarian and consequentialist viewpoints. The utilitarian argument focuses on the economic benefits of abolition of child labour which will maximize welfare in the long run by readjusting labour market parameters in favour of an increased adult wages while the dislocations caused as result of loss of income for specific groups due to abolition can be managed by short term prescriptive policy interventions aimed to ameliorate their condition. This approach would not look at the work done by children in domestic or familial contexts as exploitative. The latter view on the other hand questions the Chayanovian reasoning underling this approach and warn that the emotional considerations of filial love and parental affection are embedded in the logic of market and hence cannot be disentangled from the realm of economic circulation. Rather, it is further argued that elimination of child labour outside family can obstruct goals of maximizing benefits or minimizing harm by arbitrarily denying earning opportunities for children in the wrong assumption that family labour is non-exploitative.

This latter perspective can arguably be considered more or less as an echo of the views proposed by the first International Meeting of Working Children in Kundapur, India in 1996. The Kundapur meeting resolved that rather than abolishing child labour highlighted the need for evolving a legal and institutional environment that protects the working children from abuse and exploitation. The 'Kundapur10 points' thus offers a manifesto of the working child which includes a rejection of approaches which advocates boycott of products made by children, a demand for respect and security of working children as well as their work and an appeal to provide them work with dignity and set up mechanisms ensuring appropriate working hours and conditions. While the meeting condemned the exploitative practices it asserted the need for continued job opportunities for deprived children. The fundamental rights for education and healthy living are not undermined in this perspective. Rather an appeal to universal education and care are simply not seen as an attempt to undermine the moral economy of working children.

It may be noted that these approaches in a sense also point to the futility of an appeal to fundamental rights as a possible political solution to the problem of child labour in general. O'Neill (1989: 201) has argued that the discourse of rights neglects one crucial aspect of children's lives. According to him rights would remain 'manifesto rights' "which cannot be claimed unless or until practices and institutions are established that determine against whom claims on behalf of a particular child may be lodged" (Ibid: 201-2). As an alternative he provides a typologies of obligations of adults to children that may or may not have a corresponding claim to a 'right'. The inventory of obligations that he proposes includes perfect and imperfect obligations. The first is an obligation to all others irrespective of the agent's relationship to any particular child or children. Hence it is a universal perfect obligation and probably corresponds to a fundamental right. The second is an obligation to

specified children by specified agents. Hence it is not a universal obligation, but most certainly a perfect one. These special obligations will have special rights as their counterparts. However, they are not by definition fundamental. The third is a fundamental obligation that agents may be capable of discharging only in well-defined contexts to any particular child. This is neither universal nor perfect but do not have any corresponding rights. Nonetheless as O'Neill points out, "Although imperfect obligations lack corresponding rights, their fulfillment has not traditionally been thought of as optional: The very term imperfect obligations tells us that. What is left optional by a fundamental imperfect obligation is selection not merely of a specific way of enacting the obligation but of those for whom the obligation is to be performed." (Ibid: 191). Imperfect obligations need to be institutionalized and institutionalization of the ways that specify for whom the obligation is to be performed is perhaps the only route through which these can be claimed.

An approach based on obligations rather than rights have both ethical and political significance. Moreover, the rights based approach is flawed in believing that children are an oppressed group whose problems can be resolved if they had a claims to fundamental rights. Civil society interventions on behalf of children, particularly in the services sector has highlighted the need for an approach based on social obligations rather than children's rights. Children in the developing world have a baggage of manifesto rights like those enshrined in the constitutions of their respective countries or international organizations. O'Neill gives the example of The United Nations Declaration of the Rights of the child which includes 'the right to grow and develop in health' the right to receive an atmosphere of affection and of moral and material security and to an education which will promote general culture etc. For him "none of these rights is well formed as an enforceable claim; but can be seen as ideals that should inform the construction of institutions that secure enforceable claims" (Ibid: 201).

While the problem of children who are commercially and sexually exploited and trafficked as well as those who are not trafficked but face situations of similar abuse are different from the position of children who are placed in work situations/locations that makes them vulnerable to abuse, the nature of psychological and ethical pressure on these three different groups would be similar and painful. The problem of child labour and child sexual abuse in the travel and hotel industry has become acute and civil society intervention in this area has become correspondingly intense and focused. Before we discuss how civil society attempts to address the issue of child labour and child abuse in the services, we may take a quick look at the magnitude of the issue.

III. TOURISM IN INDIA AND ITS IMPACT ON CHILD LABOUR AND CHILD ABUSE

Growth of the travel industry in the last few decades has been phenomenal. It has become the fourth largest economic activity in the world surpassed only by armaments, petroleum and motor vehicles. World tourist arrivals increased from 25.3 million in 1950 to 698.8 in 2000. But it is immediately striking that bulk of the tourist arrivals were in developed countries. Receipts from international tourism has also been steadily increasing at a rate of 7 per cent per annum since 1992, and in 2000 receipt totaled US\$475.4 billion which would be approximately 1.5 per cent of world GDP. Identified as one of the major high growth industries of the new century, World Tourism Organization (WTO-OMT) estimates that income from tourism and related activities will amount to over US\$1.5 trillion in the year 2010. More optimistic calculations are available from World Travel & Tourism Council (WTTC), which forecasts that the global turnover from tourism by the year 2006 could be as high as US\$7.1 trillion.

Table 2 International tourist arrivals and receipts by region, 1996 and 2001

Region	1996		2001	
	Arrivals as (%) of total	Receipts as (%) of total	Arrivals as (%) of total	Receipts as (%) of total
Africa	3.5	1.9	3.9	2.5
USA & Canada	10.5	17.3	11.9	20.2
Europe	59.2	51.0	57.5	49.7
Middle East	2.6	1.9	3.3	2.5
East Asia & Pacific	14.7	19.1	16.6	17.7
South Asia	0.7	0.9	0.8	1.1
Others				
World	100	100	100	100

Source: World Tourism Organization, compiled from various Newsletters

However, as such South Asia does not appear to be a major tourist destination at the global level. Both the share of tourist arrival and receipts in South Asia are abysmally low compared to other regions including Africa (Table 1). It is often noted that many third world countries, ostensibly pressed by the problems of declining terms of trade for agricultural products and high level of protection against manufactures, are looking to tourism as an alternative source of economic growth. Resources are being diverted to the provision of airports, local transport, infrastructure and hotels with a view to create a niche of their own in the international tourism market. Rapid changes in air transport technology has helped to increase accessibility to many Third World destinations, and supply side improvements by developing states will boost the already growing demand for Third World destinations in the international tourism market. The processes of globalization and liberalization have reinforced this pattern. Nonetheless, no significant rise in their share in global tourism arrivals and receipts is discernable - a fact that reveals the fragile foundation of tourism industry in the Third World. According to the estimates of WTO-OMT, Europe, Canada and the USA accounted for nearly 70 per cent of world tourism arrivals and more than 68 per cent of world tourism receipts in 2000 (Sreekumar and Parayil, 2002). It may be noted that the picture of tourist arrival and receipts has remained almost static during the period 1996-2001. The data on the region-wise shares of international tourism arrivals and receipts show the relatively low share of South Asia and Africa in the global market. South Asia contains one fourth of humanity and had been the cradle of some of the oldest civilizations in human history, yet it is one of the least favoured tourist destinations in the world, in terms of the number of tourist arrivals. Africa and South Asia are the most illiterate, poorest, most malnourished, and least gender sensitive regions in the world. The regions, which are able to grab a lion share of tourism arrivals and receipts, are the economically advanced ones. Even the newly industrializing countries, which constitute East Asia and the Pacific, are also performing well, confirming this hypothesis. World's top tourism destinations and earners are predominantly United States, Canada and countries in Western Europe. Interestingly some projections for 2020 also provide similar results. Moreover, the export receipts from tourism in most South Asian countries is also very low (Table 3).

Table 3 Tourism & total export receipts in South Asia, 1995

Country	Tourism as % of total exports	Percentage of world receipts
India	6.9	0.7
Pakistan	1.1	0.03
Nepal	11.4	0.03
Sri Lanka	4.8	0.06
Bhutan	4.5	0.001
Bangladesh	0.6	0.006

Source: Computed from Sinclair (1999)

Are we from this statistics to conclude that tourism does not pose a serious problem in South Asia in general and India in particular? That would perhaps be an erroneous conclusion for two reasons. First, the absolute number tourists visiting South Asian countries is considerable and second, they belong to the category of regions which attract mostly the low spending segment of the international tourists who seek cheap thrills. India's performance has been one conforming to the general scenario in South Asia. This observation has been corroborated by many surveys of foreign tourists visiting India whose average annual income is reportedly US\$ 3,000 (Mahajan, 1997).

There has been a phenomenal increase in the incidence of child labour in the era of liberalization and globalization as is evidenced from the indices of growth of child labour for different economic sectors in India during 1891-2001 This is remarkably true of both male and female child workforce (Tables 3 and 4).

Table 3 Index Number of Child Labour-1891-2001 (Male)

Sector	1891	1991	2001	Percentage Increase
Cultivators	68.73	72.89	75.57	9.05
Agricultural Labourers	159.86	170.29	176.74	9.55
Mining, Quarrying etc.	70.01	74.81	77.81	10.02
Household Industry	25.26	28.36	29.62	14.72
Manufacturing other than HHI	213.58	257.65	272.77	21.70
Construction	123.56	145.02	155.27	20.42
Trade and Commerce	177.00	216.71	229.16	22.76
Transport, Storage and Communication	153.02	189.64	201.30	23.98
Other Services	35.24	41.86	44.28	21.60

Source: Compiled from D. P Chaudhri

Table 4 Index Number of Child Labour-1981-2001(Female)

Sector	1981	1991	2001	Percentage Increase
Cultivators	43.56	36.45	39.16	-11.24
Agricultural Labourers	138.07	146.48	157.56	12.37
Mining, Quarrying etc.	75.85	80.60	87.60	13.41
Household Industry	35.77	40.05	43.23	17.26
Manufacturing other than HHI	267.19	310.44	338.15	20.98
Construction	137.78	155.80	165.54	54.41
Trade and Commerce	84.66	98.10	103.09	17.87
Transport, Storage and Communication	138.97	166.06	281.49	50.63
Other Services	39.28	47.62	59.43	33.91

Source: Same as Table 3

Percentage growth rate in child labour has been the highest in sectors which are traditionally identified as having a close link to travel and tourism industry. Moreover, the services sector jobs for children are basically an urban phenomenon since the spatial characteristics of tertiary sector is predominantly urban. An analysis of data on the work profile of children for selected states in the age group 10-14 would amply illustrate this fact (Table 4). Nearly 70 percent of the boys and approximately 40-45 percent of the girls in urban areas are working in the tertiary sector and many of the jobs available in the urban informal sector are closely related to tourism. ILO (2001: 75) notes

“Child labour in tourism is common in both developing and in developed countries. Many boys and girls below 12 years of age are engaged in small business activities related to hotels and restaurants the entertainment sector or the souvenir trade, often as porters or street or beach vendors. They are frequently subjected to harsh working and employment conditions”.

Table 4 Work profile of child labour (10-14 yrs) in the services sector in selected states (Percentage: total=100)

Industry/state	RURAL		URBAN	
	BOYS	GIRLS	BOYS	GIRLS
Madhyapradesh				
TRADE & COMMERCE	1.2	0.5	44.8	-
HOTELS & REST.	0.4	-	11.6	6.0
TRANSPORT/STORAGE	-	-	10.9	-
OTHER SERVICES	0.9	1.50	1.2	32.5
Maharashtra				
TRADE & COMMERCE	-	-	37.05	10.07
HOTELS & REST.	-	-	4.82	0.05
TRANSPORT/STORAGE	-	-	6.59	2.64
OTHER SERVICES	-	-	3.27	28.38
Tamil Nadu				
TRADE & COMMERCE	4.6	-	58.0	11.1
HOTELS& RESTAURANTS.	-	0.1	5.4	1.7
TRANSPORT/STORAGE	-	-	-	-
OTHER SERVICES	-	-	2.1	3.4
Uttarpradesh				
TRADE & COMMERCE	9.41	-	44.31	7.47
HOTELS & REST.	-	-	14.98	1.32
TRANSPORT/STORAGE	1.56	-	3.02	-
OTHER SERVICES	1.73	1.08	5.08	1.94

Source: NSS 1999-2000

Analysts have noted the proneness of these service sector workers to sexual abuse. Black (1995: 49) argues most girls who come to live partially or predominantly off sexual commerce did not enter this form of work directly. They are not sex workers but the “circumstances of their working environment are manipulated to lead to sexual victimization”. Nevertheless, tourism’s role in increased incidence of sexual abuse of working children as well as child trafficking has already attracted public attention. Black (Ibid: 8) notes “The growth of international tourism is unquestionably a factor in promoting the sexual exploitation of children and young people, particularly where the availability of easy sex is emphasized as an integral part of tour marketing.” The mechanism by which the link gets established has been now been documented (Equations,2002). It is argued

“(T)he problems involved in trafficking of children for immoral purposes (sexual exploitation and abuse of children) are situated in a delicate twilight zone. They are characterized by a high degree of invisibility and mobility; they involve the necessity to balance carefully different objectives and to adopt an approach that is child friendly; they tend to be overemphasized by the media and sometimes underestimated by criminal justice, welfare and educational agencies” (Ibid).

Equations point out that the invisibility of the problem is intensified by its mobility. Pornography involving children produced in one country using children take from another country while the destination of the final product could possibly be yet another country. Consequently, prevention and detection becomes difficult and requires international and interstate cooperation. It is also noted “the anonymity and unaccountability of the tourist make the link between tourism and child sex abuse particularly pernicious” and in India, the child abuse and child trafficking is hidden “unlike in the other countries such as Thailand or Sri Lanka” (Ibid). Hence it is unlikely that the abusers are booked or brought to justice. This view is corroborated by the national figures showing very little action taken against the agents of trafficking or abusers themselves. Equations also observe that the problem is compounded by the silence of local people/community. It is also important to remember that the social and legal system is inadequate to reach families or children before the traffickers catch them.

The regional dimensions of tourism related trafficking in India shows the problem is acute in most states spanning over several districts. The main routes of interstate trafficking are 1. Agra-Dholpur-Jaipur (also called Pink Triangle) 2. Waltair-Vishakhapatnam-Miraj 3. Belgam-Bijapore-Miraj 4. Tuticorin-Tirunelveli-Madurai-Salem 4. Murshidabad-Jalpaiguri-Nadiad and 5. Goalpara and Darrang (quoted in Equations, 2000a). It is also observed that 80 percent of India's child sex workers are located in the five metropolitan cities of Delhi, Mumbai, Bangalore, Kolkatta and Chennai.

According to the Center of Concern for Child Labour there are about 900,000 sex workers in India of which roughly 30 percent are children (quoted in *ibid*). This would mean that India is the home for nearly 300,000 child sex workers. The profile of child sex workers point to the interplay of push and pull factors in child trafficking. The industries demand for younger sex workers have resulted in an increased incidence of entry of children into sex work³. Most of the children who enter sex work belong to dalit and adivasi communities as well as backward castes⁴. While poverty can be considered a major push factor in the case of socially and economically backward communities studies have shown that the link between poverty and child labour particularly in the Indian context could be complex and wanting in statistical evidence. It is plausible that children of socially and economically backward communities are more prone to be thrown into commercial than others. As noted by Equations, “The increase in and promotion of tourism in the country provides more opportunities for children to take to prostitution especially as the foreigners are thought to be richer and lavish than the natives” (*ibid*)⁵.

The sheer magnitude of the problem as well its impact on the lives of individual children and communities has necessitated both public action and civil society intervention in mitigating its consequences and finding a solution to the problem of sexual abuse and sexual exploitation of working children in the services industry. In the next section we may take a closer look at one such initiative.

IV. CIVIL SOCIETY, LEGAL INTERVENTIONS AND CHILD ABUSE

Essentially prompted by civil society, the juridical and legal interventions in India on the specific problem of child commercial sex has been considerable⁶. However, they remain inadequate given the magnitude as well seriousness of the issue. Civil society based interventions and an approach based on institutionalizing obligations to children become highly relevant in this context. One of the earlier court directive on child commercial sex involved a public interest litigation, *Vishat Jeet vs. Union of India*, in which the Supreme Court of India passed an order on 2.5.1990, that the Central & State Government should set up Advisory Committees to look at various aspects of commercial child sex⁷. Following the court directive, the Government of India constituted a Central Advisory Committee on Child Prostitution. The recommendations made by the Central Advisory Committee were sent to the concerned Ministries/Departments & to the State Governments/UT Administrations for

appropriate action. A desk has been set up in the Department of Women & Child Development, Ministry of Human Resource Development, and Government of India to implement the recommendations of the Central Advisory Committee. In 1998, the Supreme Court in its judgment in the Gaurav Jain case directed the Central Government to constitute a committee to estimate the nature and extent of the problem and to suggest solutions (Equations, 2002). The Government set up a Committee on Prostitution, Child Prostitution and Children of prostitutes that submitted its report in 1998 along with a plan of action. The plan of action envisaged reintegrating women and child victims of trafficking and commercial sexual exploitation in the society's mainstream⁸. Reluctant but positive interventions by state Governments have also been the result of civil society initiatives in this respect. Many state governments have set up State Advisory Committees as well as Advisory Boards of Social Workers and NGOs in red light areas and conduct regular raids and attempt to take measures for the protection and rehabilitation of rescued persons⁹. Nevertheless, the problem remains unresolved. Civil society organizations have also looked at the inadequacies of the existing legal framework (see table 5).

³ The Report of the Central Advisory Committee on Child Prostitution (1994) observed that the age of children at the time of entering sex work is as follows:

Age group	Percentage of Children
> 15	14.9
16-18	24.5
19-21	27.7
22-32	9.0
Total	100

Source: Equations (same as in foot note 8)

⁴ It is estimated that 60 percent of the trafficked child sex workers belong to dalit adivasi and backward caste communities. Devadasi community also contributes a substantial number of child sex workers in India.

⁵ The two major approaches to understanding child labour in India are identified as being the poverty argument and education argument respectively (Gayathri, 2002). Kabeer et.al., (2003) provide a detailed discussions on the debate on child labour and right to education in south Asia. See also for discussion, (Chandrashekhara (1995) and Leiten (2002).

⁶ Equations (2002b: 45) conducted a major study supported by the National Commission on Women, New Delhi on the tourism related sexual exploitation of children in India. The study was conducted to identify the demand factors that pull children into commercial sex. Nevertheless, 70 percent of the children interviewed for the study reportedly believe that poverty has been the main cause of their misery.

⁷ Recent years have seen a close attention on legal provisions in various countries for combating trafficking of children. See for example Chuensiri (2000) and Equations (2000b).

⁸ The order specified that the committees should come up with suggestions on the measures to be taken in eradicating child prostitution; on the social welfare programmes to be implemented for the care, protection, treatment, development and on the rehabilitation of the victims mainly children and girls rescued either from the brothel houses or from commercial sex. It also ordered to give suggestions for amendments of the existing laws or for enactment of any new law if so warranted for the prevention of sexual exploitation of children. Another aspect that received the attention of the court was Devadasi & Jogin traditions. The committees were asked to give suggestions for their welfare and rehabilitation and devising suitable machinery for implementing the suggestions made by the Committee.

⁹ The plan of action include the following components: prevention of trafficking, provision of health care services, education and child care, housing, shelter and civic amenities, economic empowerment, legal reforms and law enforcement, rescue and rehabilitation and strengthening institutional mechanisms.

¹⁰ The Devadasi rehabilitation scheme of the Karnataka Government implemented in 6 districts of the State and formation of self-help groups of Devadasis is an example of positive initiatives by state governments. The scheme has four components: training in skill development in different vocations like handloom weaving, agarbathi making, tailoring etc, linked up with marketing centers after the formation of Industrial Co-operative Units in various trades; imparting of social and moral education; health care of Devadasis with emphasis on research & co-ordination & provision for seminars/Workshops to disseminate experience and formation of residential schools to admit children of Devadasis as well as other children have been set up in the districts where the practice was prevalent (Equations, 2002a).

Table 5 Legal Framework in India

Indian Penal Code (IPC)

- 363 A - Kidnapping or maiming minor for purposes of begging
 - Kidnapping or abducting with intent secretly and wrongfully to confine a person
- 366 - Kidnapping, abducting or inducing woman to compel her marriage.
- 366A - Procreation of a minor girl
- 366B - Importation of girl from foreign country
- 370 - Buying or disposing of any person as slave
- 372 - Selling minor for purposes of prostitution
- 373 - Buying minor for purposes of prostitution
- 376 - Punishment for rape

Immoral Traffic Prevention Act (ITPA)*

- Section 2(f): Prostitution-Sexual exploitation or abuse of persons for commercial purpose
- Section 2(h): Public Place any place intended for use by or accessible to the public and includes any public conveyance
- Section 2(aa): Child means a person who has not completed 16 years
- Section 2(cb): Minor means a person between 16 - 18 years of age
- Section 13(4): The Central Government may, for the purpose of investigating any offence under this Act or under any other law for the time being in force

The Juvenile Justice (Care and Protection of Children) Act, 2000**

- Section 2 (k): “juvenile” or “child” means a person who has completed eighteen years of age.
- Section 2 (d): “Child in need of care and protection” means a child
 - who has a parent or guardian and such parent or guardian is unfit or incapacitated to exercise control over the child
 - who is being or is likely to be grossly abused, tortured or exploited for the purpose of sexual abuse and illegal acts
 - who is found vulnerable and is likely to be induced not drug abuse or trafficking
 - who is likely to be abused for unconscionable gains

Source: Based on Equations (undated)

* The main act, deals with the phenomenon of prostitution, is Prevention of Immoral Traffic Act (ITPA) 1956, the amended version of an earlier Act, Suppression of Immoral Traffic in Girls and Women, which was enacted in 1956. The Suppression of Immoral Traffic in Women and Girls Act of 1956 addressed street prostitution but not brothels. The Act was amended in 1996 and renamed as the Immoral Traffic in Persons Prevention Act. It addresses prostitution of minors (16-18 years of age) and children (below 16 years).

**Under this act, the State Governments have been empowered to constitute for every district or groups of districts one or more Child Welfare Committees (section 29) for exercising the powers and discharge of duties in relation to child in need of care and

protection under the Act. The committee shall have final authority to dispose of cases for the care, protection, treatment, development, and rehabilitation of the children and as well as to provide for their basic needs and protection of human rights.

Equations, the most prominent, if not the only, civil society organization in tourism related research and action in India, began its work in early 1980s. The initial thrust was to support the people's movement against land acquisition for tourism development in Goa. Sustained campaign through newsletters and community training encouraged local residents to voice their complaints against the tourism development programmes that affected local residents. The organization was able to rally together activists, academics and media in their work towards mobilizing public attention on the people who were affected by "tourism development" and on the gross negligence, indifference and apathy of the State. Soon the organization began to perceive the impact of tourism on women and children as one of major areas demanding closer attention of activists. They noticed that commercial sex in India faced one of the most problematic impacts in the rise of tourism. Women began to be brought into suit new "market needs". It was noticed that

"Tourism gained the image that we now know as the four S's Sun, Sea, Sand and Sex. Adventurous, exotic, the conquering of new places, became key factors drawing tourists in great numbers. The ages of the tourists were getting lower; capital from agricultural land was going into developing tourism. Politicians supported this disastrous trend and actively encouraged it. Subsidies were provided, land was cheap for those who wished to develop it and newer industries sprouted in newer areas displacing more people. Of course, the connections of these politicians with the promoters of these resorts were easy to spot. The mafia took shape promoters owning the hotels, law enforcers, politicians and others".

Tourist demand in these regions increased as unlike in countries where stringent laws against trafficking were in vogue or promulgated as response to the emerging threat, the situation in India remained the same. The organization noted that women and children had victims not just of the local conditions but of a more globalized process, "bringing, therefore, the problem back to the demand. How does one stop the child from entering the trade?" A core group was established within the Organization to study the phenomenon as well as intervene in real situations involving child trafficking. Realizing that tourism contributes to the exploitation of the child in many ways child labour, child abuse, and two particularly disturbing forms trafficking of children and child sex tourism, Equations began its action research on the links between child abuse, exploitation of children, and tourism. Networking with concerned groups, government agencies, the tourism industry and other players Equations tried to draw attention to and devise legal, administrative, and community based strategies, to combat the problem of sexual exploitation of children in tourism.

The work undertaken in the area of child trafficking including rescue operations have been important for the Organization in learning to confront the complex and vexed issue of child labour and child abuse in the industry. More over, it has helped the organization to understand the ambivalent responses of media, industry, State, Police, political parties and other civil society organizations. In the case of law enforcement officials including Police personnel, the intervention of Equations has helped to generate a growing sensitivity on the issue of pedophilia as well as trafficking. But the Organization does not find Police force as a consistent source of support in its activities. According to the activists, most cases of child abuse reported from different parts of India are not being followed up with prompt action by registering cases and booking the culprits, the indifference of the Police in many cases helping the pedophile to go scot-free. It is the experience of the activists that informing police on pedophilic activities seldom results in adequate action. In most cases police write off the complaint claiming that they could not find any evidence from raids conducted at the residence of the accused and hence no case could be filed. It is not surprising that the attitude of the police could be a constant source of State-civil society tensions in this area.

Moreover, while gravity of commercial sexual exploitation of children in tourism is an issue that needs immediate action is recognized by the state, activist regret that no comprehensive and practical plan of action for combating commercial sexual exploitation of children has been forthcoming. Political parties have also not shown sufficient attention to the issue of combating child labour and child abuse in tourism. That Equations has not worked with political parties in its two-decade long history of research and action is indicative of the relationship between political society and civil society in this area. The industry representatives have also been reluctant to offer support to the initiatives if the Organization. Nevertheless, Equations has been able to work with other civil society organizations pointing to the possibility of larger alliances of non-governmental organizations in combating the issue of child labour and child abuse in tourism. Equations finds that many organizations working on the issue of child rights are open to their efforts and seek or show willingness to collaborate on a larger platform of action¹¹.

V. CODE OF ETHICS ON TOURISM, CIVIL SOCIETY AND CHILD LABOUR

The record of International Organization has also not been satisfactory. The case in point is the interventions of World Tourism Organization (WTO-OTC). The member countries of WTO at its 13th General Assembly in Santiago, Chile adopted the new Global Code of Ethics for Tourism on 1 October 1999. Acclaimed for its lofty goals and coverage, the Code soon became the reference point for debates on a wide spectrum of issues relating to tourism such as sustainable development, equity and protection of local cultures. The formulation of the Code was the culmination of a process of debates and deliberations within the global civil society as well as tourism industry on the negative impacts of tourism on environment and on cultural heritage and growing doubts on the claims that tourism benefits the residents of tourism destinations.

According to the Secretary General of WTO, “the Global Code of Ethic for Tourism sets a frame of reference for the responsible and sustainable development of world tourism at the dawn of the new millennium. It draws inspiration from many similar declarations and industry codes that have come before and it adds new thinking that reflects our changing society at the end of the 20th century”. He also describes the process of formulating the guidelines. The code was first called for in a resolution of the WTO General Assembly meeting in Istanbul in 1997. Subsequently, a special committee for the preparation of the Global Code of Ethics was constituted. The Secretary-General and the legal adviser to WTO in consultation with WTO Business Council, WTO's Regional Commissions, and the WTO Executive Council prepared a draft document. The United Nations Commission on Sustainable Development meeting in New York in April 1999 approved the concept of the Code. WTO was also asked to seek further inputs from the private sector, civil society organizations and labour organizations. The Secretary-General remembers, “Written comments on the code were received from more than 70 WTO Member States and other entities. The resulting 10 point Global Code of Ethics for Tourism - the culmination of an extensive consultative process- was approved unanimously by the WTO General Assembly meeting in Santiago in October 1999.”

A close look at the process of formulation of the Code, however reveal that the role of the civil society has been marginal. It was initially drafted by entities known to safeguard the interests of the industry and at the instance of Commission on Sustainable Development (CSD), a notional participation was elicited from member states and civil society organizations. This is not surprising given the fact that the structure and processes of international consensus building often undermine the essential principles of democratic debate.

Nevertheless, if we consider the fact that the overwhelming demand for restructuring tourism practices had in the past and present emerged from individuals and organizations of the global the civil society, it is remarkable how hard it is to find their imprint in the text of

the Code. WTO has in its turn tried to project that the Code is a comprehensive document capable of addressing the complex web of tourism issues both in the developed and in the underdeveloped world. According to them, the formidable challenge is in the implementation of the Code and they refuse see any whiff of tensions or contradictions within the Code that could come in the way of its easy acceptance and implementation. Hence, it is suggested by the secretary General of WTO that it “is intended to be a living document. Read it. Circulate it widely. Participate in its implementation. Only with your cooperation can we safeguard the future of the tourism industry and expand the sector’s contribution to economic prosperity, peace and understanding among all the nations of the world”.

The civil society organizations at the local and global levels have been upholding an unequivocal opposition to the processes and practices of mass tourism in the past decades which had resulted in the massive destruction of local cultures, livelihood of Indigenous People, deterioration in environmental quality and depletion of natural resources, uneven economic gains, growth of exploitative commercial sex, child abuse, trafficking and an overall escalation of resource drain from the third world through under pricing as well as surplus extraction. The need for a code of Ethics in Tourism emanated from the urgency of combating these maladies as well as setting new rules of the game for the industry practitioners. Nonetheless, it is surprisingly clear that the text of the Code does not reflect the wide set of concerns and issues that triggered the demand by the civil society organizations to set new rules.

It appears that the Code was formulated simply to provide legitimacy and to shore up the ailing travel industry whose global operations still smack of the very same nefarious practices condemned by the civil society. The acceptance of the Code by 106 member countries have not, according to reports from various local and global organizations working the area of sustainable development, equitable tourism, trafficking and child abuse, resulted in any mitigation of the exploitative character of tourism industry particularly in the developing world. When confronted by this contradiction, the official response is profoundly indifferent to the conflicting and contradictory nature of the text of the Code itself. Instead these problems are often counted as emanating from floppy implementation of the Code of Ethics. The failure of the respective national, regional or even local governments in sincerely adhering to and implementing the Code of ethics is highlighted as the major reason for the continued ill effects of tourism in the third world.

However in this discourse, the most important fact that is overlooked is the failure of the Code to reflect the aspirations and concerns of the marginalized communities and political and economic questions raised by the civil society. As a consequence of this official indifference to the larger questions of development, redistribution and ethics in the process of formulation of the Code, there are at least two important aspects of the Code that calls for a critical reassessment of its usefulness. One pertains to the limitations of the assumptions and principles of the code. Second pertains to the tension between the assumptions and principles of the code. We shall here discuss these two points. These conflicts are rooted in the gross negligence of the issues raised by the civil society as incorporated in the “Position Paper for further discussion on the issue of a Global Code of Ethics for Tourism” submitted to WTO by Equations, Tourism European Ecumenical Network (TEN) and Ecumenical Coalition on Third World Tourism (ECTWT).

Let us begin by taking a close look at some of the major the assumptions of the Code. These assumptions are detailed in the preamble of the code. In its eagerness to paint an exceedingly rosy picture of tourism practices the code at the outset itself argues a case for understanding tourism as an instrument for peace. The preamble of the Code asserts, “Through the direct, spontaneous and non-mediated contacts it engenders between men and women of different cultures and lifestyles, tourism represents a vital force for peace and a factor of friendship and understanding among the peoples of the world”. While we

have reports from the grassroots about the conflicts over resources and cultural practices consequent on the increased flow of tourists into relatively quiescent regions of the world,

the case for tourism as a tool for peace or conflict resolution has been very weakly argued. Its role in mediating for increased international understanding has never been worth considering. The geo-politics of the evolution of many of the tourism destinations is intertwined with economic aggression, occupation, colonization, increased incidence of child abuse and war. As Fredric Jameson (1991) points out in his *Postmodernism, or the Cultural Logic of Late Capitalism*, “the underside of culture is blood, torture, death and horror”.

Another major assumption of the Code of ethics is regarding the free market economy and its benefits. The code looks at the issue of marketization from the perspective of the industry and ignores the diverse views of local communities and the pangs of their integration into its fold. Hence it is argued, “World tourism industry has much to gain by operating in a market economy and environment of free trade”. The Code is callously insensitive to the enormous problems created as a result of the incorporation of local communities into the market economy. This is particularly significant in the case of the expansion of the service sector where jobs for women and children in the informal activities make them increasingly vulnerable to abuse and over exploitation.

As a corollary to this, and in gross violation of the position held by the representatives of the civil society, the Code asserts that tourism is compatible with the liberalization of the conditions governing trade in services. In one stroke it disowns the concerns of the local communities and takes a pro-GATS approach while it is denounced by majority of the developing countries and the global civil society for its exploitative character. The Code hence argues that 'responsible and sustainable tourism' is “by no means incompatible with the growing liberalization of the conditions governing trade in services and under whose aegis the enterprises of this sector operate and that it is possible to reconcile in this sector economy and ecology, environment and development, openness to international trade and protection of social and cultural identities”. The worldwide practice of mass tourism has in fact been a telling example of the failure of the modern sectors of the economy to achieve this blissful state of harmony so easily claimed by the Code.

The major Principles outlined in the code also fail to do justice to the set of issues that the civil society had been careful enough to take up with WTO. The Code at its best is trying to translate an ideal average of imagined benefits of tourism into its Principles. Thus it is variously presented as providing a platform for mutual understanding and respect between peoples and societies, a vehicle for individual and collective fulfillment and an important factor of sustainable development. These goals are never met and the likelihood of such harmony and peace are increasingly challenged in the new context of globalization and market liberalization that WTO uncritically embraces.

Some of the Principles of the Code such as tourism ought to be a contributor to the enhancement of cultural heritage, it should be a beneficial activity for host countries and communities; stakeholders have obligations in tourism development etc., do emphasize the need for upholding an equitable approach and perspective in tourism promotion activities as well as tourism practices. In this sense, the Code has been successful in appealing to the various actors in the field to mitigate the negative effects and strive to maximize the benefits. Nevertheless, the Code openly legitimizes the excessive urge of the global capital to explore and exploit the quiescent areas and integrate them fully into market economy when it argues, “the planet's resources are equally open to all the world's inhabitants”. Moreover, this line of reasoning also undermines the right of autonomy and self-determination of local communities. In the name of a vague and inept concept of “Tourism Rights”, the Code strikes at the very core of the demand of the marginalized and underprivileged communities for the rights to exercise their control over their own land and

resources. Children belonging to these communities have become easy victims of these 'developmental' approaches. Another principle, which runs as a corollary to this position, is the demand for liberty of tourist movements that states, "visitors should benefit from the same rights as the citizens of the country visited". Redistributive policies such as differential pricing for tourists from developed countries etc., which forms the core of the resource management and sustainable strategies of many of the third world destinations, are threatened by this principle.

While the Code is more or less indifferent to the issue of child labour and child abuse it is very eloquent about the rights of permanent workers and entrepreneurs of the tourism industry. It appeals to the Multinational Corporations (MNCs) that they "should not exploit the dominant positions they sometimes occupy; they should avoid becoming the vehicles of cultural and social models artificially imposed on the host communities; in exchange for their freedom to invest and trade which should be fully recognized, they should involve themselves in local development, avoiding, by the excessive repatriation of their profits or their induced imports, a reduction of their contribution to the economies in which they are established". The Code, which thus carefully details the rights of permanent workers, small entrepreneurs and MNCs, however, silent about the informal sector and informal sector workers, who are mostly women and children in the third world. This is a painful neglect when we consider that the informal sector jobs are, more often than not, taken up by workers displaced from their traditional occupations that disappear consequent on the

aggressive incursion of the tourism industry. Histories of many of the third world tourism destinations are littered with the stories of displacement and inadequate rehabilitation of marginalized communities. The Code of Ethics offers no perspective on this important question.

The failure of the Code of Ethics to address satisfactorily the issues and concerns raised by the civil society appears to be ignored in the contemporary discussions on the topic. The mistaken emphasis is often on the 'implementation issues'. The inherent limitations, tensions and contradictions of the text are invariably overlooked. The Code in its present form is essentially a document that serves the interests of the industry while ignoring the rights of the marginalized and the oppressed. It attempts to legitimize the economic exploitation perpetuated by market-oriented policies of liberalization and globalization. In this context, it is necessary to formulate an alternative Code of Ethics for Tourism, which would incorporate the ideals and aspirations upheld in the position paper of the civil society organizations and with a better focus on the issue of Child labour as well as child abuse.

VI. CONCLUSIONS

In this paper we have made a modest attempt to understand the dimensions of child labour and child abuse in the services sector with particular emphasis on the travel and catering industry. The magnitude and manifestations of the problem of child labour and child abuse in the services sector in India as well as the response of civil society to this issue has been the focus of our attention. The rhetoric of rights is often invoked to attract public attention to the cause of child labour and child abuse. While conceding that this strategy has certain political utility, following O'Neill (1989) we have argued that a an obligations based approach may be more agreeable given the obstacles of enforceability of "children's rights' that often appear problematic in developing country contexts. Moreover, there are obligations that need to be institutionalized despite the absence of corresponding rights. We have also discussed the nature and extent of child labour and child abuse in the services. The regional spread and intensity of the problem point to the need for comprehensive strategies to combat the issue of child abuse and child labour in travel and catering industry. Drawing the contours of civil society engagements with the problem of both child labour and child abuse in the sectors with close links to tourism was attempted against the backdrop of inadequate judicial and legal interventions. The work undertaken by Equations in the last

two decades in the tourism sector highlights some of the tensions and ironies that characterize state civil society relations in this realm. Finally, a critique of the global code of ethics of tourism from the point of view of civil society reveals the inadequacy of international organizations in addressing the issue of both child labour and child abuse in tourism.

Reference:

¹ See for a discussion, Sreekumar (2001)

² Following the publication of the controversial work by Burra (1995) many interesting case studies and analytical reflections have been added to the literature on child labour in hazardous industries. Most recent studies include Anker and barge (1998), Ghosh, Raj and Sekar (2001), Misra (2000) and Vijayabhasker (2002).

³ See for a discussion Nieuwenhuys (2000). Nieuwenhuys points to scenarios such as children being used as an economic asset to gain access to resources of wealthier kin by sending them as servants or assistants for economic benefits or other favours. Nieuwenhuys seems to suggest a misuse of parental power, an issue commented by Marx (1977:620) in his response to a similar observation made by the children's Employment Commission in 1866. The commission observed that exploitation of domestic labour was "maintained only because the parents are able, without check or control, to exercise this arbitrary and mischievous power over their young and tender offspring". Marx response is typically dialectical: "It was not however, the misuse of parental power that created the direct or indirect exploitation of immature labour-powers by capital, but rather the opposite, i.e. the capitalist mode of exploitation, by sweeping away the economic foundation which corresponded to parental power, made the use of parental power into its misuse". Not surprisingly, Marx sees this development as creating a new economic foundation for a "higher" form of the family and of gender relations (Ibid: 21).

⁴ Twenty-nine working child delegates from thirty-two countries of Asia, Latin America and Africa met at the first International Meeting of Working Children held in India from November 27 to December 9, 1996. The ten points of consensus identified in the meeting are referred to as The Kundapur Declaration. See also Hobbs, Mc Kechnie and Lavallette (1999: 131-2).

⁵ Although it is noted that long haul travel will grow faster than intra-regional travel in the period 1995-2020, the market share of different regions are projected to be surprisingly similar to the scenario observable in 1995 World Tourism Organization, 'Tourism highlights 2002'

(Retrieval at www.world-tourism.org).

⁶ See for discussion, Sreekumar and Parayil (2002).

⁷ Nevertheless, Black is quick to point out that "it is far from the exclusive dynamics at work.... evidence from Thailand (shows) that the majority of female child prostitutes serve local customers and considerable local custom is reported from Philippines". According to her, "(it is) the visibility of the foreign tourists, and the sensitiveness surrounding child prostitution which make it easier to blame the 'unclean other'". However, the civil society organization working in the area of child trafficking have pointed to tourism as the most important factor perpetuating child abuse in India.

⁸ Center for concern for Child labour has found that the problem of trafficking is acute in 79 districts in India:

State	Number of districts
Madhyapradesh	10
Rajasthan	9
Maharashtra	9
Uttarpradesh	8
West Bengal	8
Bihar	8
Karnataka	7
Andhraparadesh	6
Orissa	5
Tamilnadu	4
Assam	2
Gia	1
Meghalaya	1
Total	90

Source: Equations, (2002a)

⁹The Report of the Central Advisory Committee on Child Prostitution (1994) observed that the age of children at the time of entering sex work is as follows:

Age group	Percentage of Children
> 15	14.9
16-18	24.5
19-21	27.7
22-32	9.0
Total	100

Source: Equations (same as in foot note 8)

¹⁰It is estimated that 60 percent of the trafficked child sex workers belong to dalit adivasi and backward caste communities. Devadasi community also contributes a substantial number of child sex workers in India.

¹¹The two major approaches to understanding child labour in India are identified as being the poverty argument and education argument respectively (Gayathri, 2002). Kabeer et.al., (2003) provide a detailed discussions on the debate on child labour and right to education in south Asia. See also for discussion, (Chandrashekhar (1995) and Leiten (2002).

¹²Equations (2002b: 45) conducted a major study supported by the National Commission on Women, New Delhi on the tourism related sexual exploitation of children in India. The study was conducted to identify the demand factors that pull children into commercial sex. Nevertheless, 70 percent of the children interviewed for the study reportedly believe that poverty has been the main cause of their misery.

¹³Recent years have seen a close attention on legal provisions in various countries for combating trafficking of children. See for example Chuensiri (2000) and Equations (2000b).

¹⁴The order specified that the committees should come up with suggestions on the measures to be taken in eradicating child prostitution; on the social welfare programmes to be implemented for the care, protection, treatment, development and on the rehabilitation of the victims mainly children and girls rescued either from the brothel houses or from commercial sex. It also ordered to give suggestions for amendments of the existing laws or for enactment of any new law if so warranted for the prevention of sexual exploitation of children. Another aspect that received the attention of the court was Devadasi & Jogin traditions. The committees were asked to give suggestions for their welfare and rehabilitation and devising suitable machinery for implementing the suggestions made by the Committee.

¹⁵The plan of action include the following components: prevention of trafficking, provision of health care services, education and child care, housing, shelter and civic amenities, economic empowerment, legal reforms and law enforcement, rescue and rehabilitation and strengthening institutional mechanisms.

¹⁶The Devadasi rehabilitation scheme of the Karnataka Government implemented in 6 districts of the State and formation of self-help groups of Devadasis is an example of positive initiatives by state governments. The scheme has four components: training in skill development in different vocations like handloom weaving, agarbathi making, tailoring etc, linked up with marketing centers after the formation of Industrial Co-operative Units in various trades; imparting of social and moral education; health care of devadasis with emphasis on research & co-ordination & provision for seminars/Workshops to disseminate experience and formation of residential schools to admit children of Devadasis as well as other children have been set up in the districts where the practice was prevalent (Equations,2002a).

¹⁷E-mail communication from Joyatri Roy, Equations

¹⁸Ibid

¹⁹For example in Andhra Pradesh, APCRAF, an organization with a network of 300 civil society groups in Vijaywada is collaborating with Equations on work relating to combating commercial sexual exploitation of children in tourism.

²⁰ More information on global code of Ethics for Tourism is available at <http://www.world-tourism.org/aboutwto/eng/menu.html>

²¹“Message from the Secretary-General of WTO: Preparing the new millennium” Retrievable at <http://www.world-tourism.org/projects/ethics/ethics.html>

²²ibid.

²³“Position Paper for further discussion on the issue of a Global Code of Ethics for Tourism” retrievable at http://csdngo.igc.org/tourism/tour_ethics.htm. This draft was completed by tourism-related NGOs and research institutes from the following countries: Belgium, Denmark, Ecuador, Germany, India, Indonesia, Netherlands, Republic of South Africa, and Switzerland.

The Union Government Ban on Child Labour and Civil Society responses

EQUATIONS¹

The Ministry of Labour and Employment, Government of India, issued a notification (Appendix I) amending the Child Labour (Prohibition and Regulation) Act 1986 (the Act) on 1st August 2006. Given below are a set of responses from various civil society organizations and individuals concerned with the effectiveness of this Act and raising issues of implementation.

1. EQUATIONS advocacy note on the ban of child labour in domestic and hospitality sector.

The Act, which has been in force since 1986, has not been very effective in terms of addressing the issue of child labour and the exploitation of children and protecting the children from exploitation. EQUATIONS' response to this amendment is through the lens of tourism and the extent to which we believe this amendment is a step towards addressing the issue.

What does the new Amendment state?

The Centre has prohibited:

- a) Employment of children below 14 years as domestic servants.
- b) Also, employment of children in hospitality industry, which includes:
 - Dhabas
 - Roadside eateries,
 - Restaurants,
 - Hotels,
 - Motels,
 - Teashops,
 - Resorts,
 - Spas or
 - And other recreational centres.
- b. The Notification makes employment of children in any form, in these sectors, an offence.
- c. The ban, under the Act will be effective from 10th October 2006.

What is the primary objective of the new Amendment?

- The primary objective is recognition of the above forms of child labour under the "hazardous" category.
- The Notification is recognition by the Government that child labour exists in these sectors and these children are exploited, both physically and mentally.

¹EQUATIONS, 2006

- No longer does civil society have to appeal to people's conscience for not employing children at homes, teashops, dhabas, eating joints along highways, roadside shack kiosks and eateries, restaurants, hotels spas or any similar business. Now it is completely illegal to do so.
- The restriction of not employing children in homes and hospitality industry applies not only apply to government employees but to all. (Government employees were already banned from employing children for domestic help by a previous notification passed by the Ministry of Labour and Employment).

Context:

- Children employed in homes and the hospitality industries are subjected to physical, mental and sexual abuse.
- Activists have been campaigning for years to include these forms of child labour also under the "hazardous" category to protect children who are subjected to physical violence, psychological trauma and even sexual abuse.
- Abuse of children in these occupations most often goes unnoticed and unreported as they take place within the confines of homes or restaurants.
- In February 2006, responding to a petition filed by Shantha Sinha of M.V. Foundation in connection to an already pending Public Interest Litigation (PIL) by environmentalist and lawyer M.C. Mehta, the Supreme Court issued notice to the Centre, the states and the Union Territories, seeking a complete ban on child labour.
- The petitioners had contended that the existing legislations were not completely prohibiting child labour in all occupations and processes.
- The initial Act prohibited employment of children only in certain specified hazardous occupations and processes and regulated the working condition in others.

Penalty for Violation

According to the recent Notification, penalty for flouting the law is:

- Imprisonment ranging from three months to two years with or without
- Fine ranging from 10,000 to Rs. 20,000/-

Links to tourism

Research studies² show that: Work damages a child's physical, mental, social, and psychological development

- Most children involved in tourism activities run the risk of being sexually exploited due to constant exposure and involvement with adults
- Children employed in roadside eateries and highway dhabas are highly vulnerable to sex and drug abuse as they come in contact with both locals as well as tourists. As a result they are also directly vulnerable to HIV/AIDS.
- Because of economic and physiological vulnerability many children end up being caught up in a life of servitude, suffering sexual as well as physical exploitation and these odd jobs keep them away from schooling on the one hand and do not provide the opportunity for meaningful vocational training either so growth and development is affected.

²Refer research studies like, "Quick Money-Easy Money? A Report on Child Labour in Tourism" Christine Pluss, SDC Working paper 1/99, Berne, Switzerland, May 1999 & "Towards Strengthening Rights of Minors and Adolescents in Tourism", 2004 by EQUATIONS with support from UNIFEM and USAID

- In spite of the Act being passed in 1986, since employment in hospitality industry was not within the category of “hazardous occupation”. Employers in the Hotel, Catering and Tourism sector continued to employ children.
- The economic cause being that children can be and are employed for lower wages. This increases the incidence of children being employed and trafficked for such employment.
- Children labour is also very common in family based small enterprises where children are engaged by their family to sell trinkets nuts, tea etc on the beaches and roadside shacks and small restaurants. These children are also vulnerable to similar

Some concerns with respect to the Notification

EQUATIONS supports such a move by the Government, particularly in the context of the need for stern and unambiguous measures to stop exploitation of children. However, we also share the concerns raised by other civil society groups³ in the implementation mechanism needed in order to demonstrate serious intent to tackle the issue of child labour in these sectors.

- Is the Government prepared itself to deal with the consequences of such a notification, which is sure to leave many children without a source of income from October 10 and beyond, leaving them to struggle for survival on the streets? What are the measures to see that they do not enter beggary or organised crime gangs but are enrolled into school? What are the alternatives for families which were dependent on the income from children? This points to the larger question of solving the urban unemployment crisis itself.
- Rehabilitation Policy for the rescued children (The rehabilitation Policy must be holistic and must not inflict more hardship than benefit on the already precarious existence of these children)⁴.
- Are there any plans to consult children while chalking out rehabilitation options acceptable and appropriate for them? A serious intent towards implementation would imply that the plans for the rehabilitation should look into rehabilitation of the families of the children, who have been forced by their families to work? Unless these root causes are addressed holistically and progressively, this ban will be treating just the symptoms, not the causes of the problem.
- We are concerned about the trauma on the child who is already exploited and traumatised while being employed as domestic labour and in the hospitality industry. The government should frame adequate rules and regulations to impose responsibility of psychological counselling and rehabilitation of these children to adequate Authorities. Moreover, the government should form Committees comprising of representatives from the Civil Society (those who work on the issues related to child welfare) and certified medical councillors and medical practitioners to examine and review the working of these designated Authorities.
- What is the preventive measure taken by Government to prohibit children who are self-employed, like selling trinkets; nuts, tea etc in the beaches and roadsides.
- What is the government's strategy to ensure that children themselves are adequately informed of this ban, which will have a tremendous impact on their lives in the near future?

³Concerns raised by “The Concerned for Working Children (CWC)”,Karnataka and other Civil Society Organizations

⁴Refer research study “Rescuing child Labourers: An analysis of the operations undertaken to rescue children trafficked to labour in the jewellery units in Karnataka” , 2004, by EQUATIONS and APSA with support from UNIFEM, South Asia regional Office and USAID

- How has the government equipped itself in implementing this ban? How will this ban be any different from the numerous other banned occupations and processes that continue to break the law by enslaving millions of children in subhuman working conditions?
- Is there a detailed strategy plan for identification of child labour in these sectors? In all these sectors, there is a danger of rendering children even more invisible and vulnerable, if the identification process and subsequent follow up is poorly executed.
- There are also a significant number of young people in the age group of 14-18 years who are employed in these sectors under equally harsh situations. Our concern is that this legislation take cognisance of them and ensure that their rights are not violated as well

Therefore we feel that civil society organization must play a key role in implementing this notification and making government accountable in its functioning. We the members of Civil Society need to play a proactive role to check and monitor Government policies and plans and their implementation and ensure that the issues / concerns are addressed at each level of governance. Right to Information Act is one of the tools to check and monitor the implementation of the Notification by the government and its agencies.

2. NOTIFICATION ON CHILD LABOUR - Child labour ban not good enough: Child Rights and You (CRY)⁵

The Centre's latest piece-meal approach to child labour is likely to be as ineffective as the previous failed schemes and plans. Unless the underlying causes of child labour are addressed, and the rights of children are properly secured, India will remain prone to wide spread childlabour, writes Ingrid Srinath.

The Ministry of Labour recently issued a notification banning children below 14 from working in residences and the hospitality sector. After agriculture, these areas are where children are employed in the highest numbers, and it is hoped that prohibiting their employment in homes and at waiting tables will address a large lacuna in the current laws against employing children. The prohibition was brought into force by adding these areas in the list of hazardous occupations, where child labour is already prohibited. The ban has been imposed under the Child Labour (Prohibition & Regulation) Act, 1986 and will be effective from 10th October 2006.

The national child rights organisation Child Rights and You (CRY) has welcomed the Ministry's recent notification but feels it is an insufficient response. Many gaps still remain in the legal provisions against child labour, and even the ones already in existence cannot be effective without proper enforcement and rehabilitation provisions. Moreover, the group has pointed out that while this notification has been necessary, it is at best another in a long line of piecemeal efforts. For real change to occur the root causes of child labour have to be addressed causes like the lack of a coherent education policy, insufficient schools, poverty, marginalization, migration etc - situations that force children into work.

In our press release, we observed that 27 years of CRY's work with 2,500 marginalised communities across 20 states across India has shown that the piece-meal, scheme-based, relief-oriented approach adopted by both governmental and NGOs has limited impact and practically no sustainability. This is because they fail to address the underlying causes of

⁵Ingrid Srinath, is Chief Executive Officer of Child Rights and You. This Article was published in India Together an E.paper on 23 October 2006

deprivation. Causes related to gender, caste, ethnicity, religion and class keep over 100 million Indian children hungry, unschooled and vulnerable to the worst forms of abuse and exploitation imaginable. Instead, irreversible change is only possible when children, parents, community groups and local government come together to identify, address and resolve the issues that constrain children.

This broader demand apart, even within the notification's limited ambit, CRY has noted significant gaps:

- The prohibition is restricted to servants at home, hotels, dhabas and other recreation centres. It is not clear whether this applies to the household manufacturing sector, where a vast number of children are employed in similar working conditions.
- The conviction rate for the already existing Child Labour (Prohibition & Regulation) Act, 1986 is abysmally low - so low, in fact, that it is hardly a deterrent for employers. Without strengthening both enforcement mechanisms and provisions for rehabilitation, making additions to the list of prohibited employments for children has little meaning.
- The notification is premised on the belief that that child labour needs to be prohibited in hazardous occupations only, but does not take a clear view of what children ought to be doing in their childhood - learning in safe and meaningful schools. An insular notification of this sort totally ignores children's right to safe and facilitating environment for development, including health, nutrition and education needs.

It is also noteworthy that the government's notification is incongruent with another related issue pending before it - namely, ensuring the fundamental right to education. Legislation enabling this right to education is yet to be passed in Parliament, which raises the question - if children are to be stopped from working so that they may attend schools instead, why is there such a lack of political will in securing the right to education?

CRY believes, for this reason, that the notification on child labour has to be seen in this light - more than protecting children from hazardous employment, the government may be trying to ward off a Supreme Court decision banning all forms of child labour. The Court has already asked the States for their views on why child labour should not be entirely abolished. Its query to the state governments may have prompted this limited response from the executive.

Clearly, the journey is far from complete. The National Sample Survey 2000, reported 16.4 million Indian children aged 5-14 years were 'engaged in economic activities and domestic or non-remunerative work'. Another 46 million children of school-going age are unaccounted for, neither enrolled in school nor officially working. Giving India at least one reason to be #1 home to the largest number of child labourers on the planet.

3. CHILD LABOUR: Imperfect sympathy: T. K. Rajalakshmi⁶, Journalist

The ban on child labour in eateries and households may not become effective in the absence of adequate rehabilitation mechanisms.

CHOTU works in a tea shop in the heart of New Delhi, in the parking lot of a prominent newspaper establishment. He claims he goes to school but is often seen ferrying tea through the day until 8 p.m. He works like a machine; his age and energy are indispensable to his employer, who insists that he does not want to go to school. Chotu is a generic name for thousands of children working in such establishments and eateries in most parts of India. They are often seen outdoors, washing utensils, serving food, and taking orders from the owners as well as customers. A very large number of girls are also among the child workforce. They are mostly domestic helps, sometimes accompanying their mothers and sometimes working alone.

What these children do may not necessarily constitute hazardous work under its conventional definition, but according to a Technical Advisory Committee of the Ministry of Labour headed by the Director-General, Indian Council of Medical Research, they are involved in such work. The committee recommended their inclusion in occupations prohibited for persons below 14 years of age under the Child Labour (Prohibition and Regulation) Act, 1986. It observed that these children were subjected to physical violence, psychological torture and at times even sexual abuse. These incidents, it opined, went unreported and unnoticed as they often took place within the confines of houses, dhabas (roadside eateries) or restaurants. The committee also observed that these children worked for long hours, were made to undertake hazardous activities affecting their health and psyche severely and that those working in roadside eateries were the most vulnerable to sex and drug abuse.

Based on the recommendations, the Union government decided on August 1 to prohibit employment of children as domestic servants or servants in dhabas, restaurants, hotels, motels, tea shops, resorts, spas or in recreation centres. The ban has been imposed under the 1986 Act and will be effective from October 10, 2006. Anyone found employing children in these categories will be liable to prosecution under the Child Labour Act.

What is surprising is that it took so long for the government to realise that there was a problem at hand with regard these children. Either the governments at the Centre and in the States were oblivious of the growing multitudes of children in such occupations, or despite such knowledge they turned a blind eye to this kind of exploitation. While the ambit of what constitutes hazardous work and what does not needs to be constantly expanded given the myriad forms of exploitation of child labour, the policy of the government has been somewhat restricted to banning employment of children below the age of 14 in factories, mines and hazardous forms of work and to regulating the working conditions of children in other forms of employment.

According to figures received from the office of the Registrar-General of India, in 2001 there were 1.26 crore working children in the 5-14 age group as compared to 1.13 crore in 1991. The State-wise distribution shows that the largest number of working children were found in Uttar Pradesh (0.19 crore), followed by Andhra Pradesh (0.14 crore), Rajasthan (0.13 crore) and Bihar (0.10 crore). The bulk of child labour was found in agriculture and agriculture-related activities such as cultivation, livestock rearing, forestry and fishery. Evidently, unless drastic measures are taken, the numbers are likely to swell by the next Census.

⁶ T.K. RAJALAKSHMI Frontline Magazine, volume 23- Issue 17: 26 August - 8 September 2006

While most sections involved with child rights and the elimination of child labour have welcomed the ban, they are sceptical about its successful implementation given the lack of convictions under the present Act. Secondly, the record of the Centre has been rather poor as far as the "gateways of opportunity" for poor people are concerned. This term, which figures in the International Labour Organisation (ILO) report "The End of Child Labour: Within Reach", includes development efforts focussing on the reduction of poverty, a minimum age of employment and the provision and extension of compulsory education, among other things.

The National Policy on Child Labour (NPCL) will be two decades old in 2007 and the country is nowhere near the elimination or even the mitigation of child labour. The policy was formulated with the understanding that to eliminate child labour, a gradual and sequential approach was needed with its focus first on the rehabilitation of children in hazardous occupations and processes. In 1988, the National Child Labour Project was launched, initially in nine districts. It was extended subsequently to 250 districts. Subsequent to the August 1 notification, the Labour Ministry plans to strengthen and expand its rehabilitation scheme under the NPCL beyond the 250 districts. This scheme was basically about providing special schools for child workers, where formal and non-formal education would be provided along with vocational training, a small stipend, supplementary nutrition and health check-ups with the larger objective of helping them to be part of mainstream schools.

The scheme was evaluated in 2001 and a strategy to implement it was devised in the 10th Plan. This included linking child labour elimination efforts with the scheme of Sarva Shiksha Abhiyan of the Ministry of Human Resource Development to ensure that children in the 5-8 age group got admitted directly to regular, mainstream schools and that the older children were inducted into the formal education system under special schools functioning under the NPCL scheme.

A recent report submitted by the Comptroller and Auditor General of India (CAG) to the government on the situation of the Sarva Shiksha Abhiyan paints a dismal picture. Four years since the implementation of the campaign, the CAG report says, the government has managed to get only 40 per cent of children in the age-group 6-14 into school. The rest continue to be out of school and presumably engaged in some form of work. The report also points out that the supervision and monitoring of the scheme was ineffective at both the national and State levels; that a large number of schools in most of the States and Union Territories were functioning without buildings; that the budget estimates and revised estimates were far less than the original outlays approved by the Department of Elementary Education and literacy; and that funds were regularly diverted to schemes other than those related to Sarva Shiksha Abhiyan activities.

While there is a debate on whether all kinds of child work is exploitative or not, most persons agree that there is an intrinsic link between elimination of child labour, elimination of poverty and retention of children in schools. Organisations such as Social Jurist, a civil rights group working on child labour and the right to education, opine that the notification by itself cannot be taken seriously when the government has failed to enact legislation to implement the 86th Amendment to the Constitution which made education a fundamental right. The Amendment was carried out in 2002. Soon after massive efforts were initiated to get a piece of Central legislation in place. This was the minimum that was expected from the government. It seems now that the Centre has more or less given up the idea of enacting any legislation.

The draft Bill guaranteeing free and compulsory education was hardly introduced despite going through a lot of changes and brainstorming by educationists and child rights campaigners. Instead the government has circulated a model Bill to the State governments and that too with a caveat. Ashok Aggarwal, advocate for Social Jurist, said that the States

that adopted the model Bill in toto would get 75 per cent funding for the Sarva Shiksha Abhiyan while the ones that did not would have the Central allocation to the Sarva Shiksha Abhiyan slashed to 50 per cent.

Another prominent organisation working in the area of child rights, Child Rights and You (CRY), while welcoming the notification, stated that the ban was not sufficient. The notification, a statement from CRY said, was limited in its ambit. The prohibition was restricted to domestic helps, hotels, dhabas and recreation centres; it did not cover the household manufacturing sector. Secondly, no enforcement mechanisms had been spelt out, nor had any provision for rehabilitation been specified. Thirdly, it was felt that the notification was premised on the notion that child labour needed to be banned only in hazardous occupations.

The government's intention to ban child labour must be matched with action on the ground. It cannot dissociate the elimination of child labour from the quality of education it doles out to the children of lower-income groups. It is estimated that there are 10 crore children under the age of 14 who are out of school and engaged in some form of work; Social Jurist estimates that in Delhi alone there are 15 lakh such child workers. Moreover, there have been numerous instances documented by Social Jurist of government schools turning away children prepared by the learning centres under the Sarva Shiksha Abhiyan. It is clear that merely increasing the number of districts under the NPCL scheme or declaring an intent will not arrest the growing number of child labourers. The problem lies very much with the government's attitude to child labour itself.

4. The ban nips the child's right to survival: The Concerned for Working Children⁷

Children are not commodities like narcotics that can be removed with a raid and then disposed of.

The new amendment to the Child Labour Act including the work of children below the age of 14 at residences and the hospitality industry to the list of banned occupations is just a cosmetic move to appease the West and paint a clean image of India in the global market. More importantly, it is a very detrimental move for the children working in these sectors.

The high profile "rescue" operations or raids have begun. NGOs and government officials are hitting the headlines as the saviours of working children and thousands of children will be "liberated". However, with no tangible alternatives being offered, what will be the fate of these children? Will their families welcome this move or will it mean that their last straw of survival has been rudely snatched away?

There is no question that children should be protected from work that is harmful to their growth and development and detrimental to their physical, emotional and moral safety. However, bans, as the past 20 years have more than adequately proved, are not the answer to the child labour question. The number of child workers has grown since 1985 and India still has the dubious distinction of being home to the largest number of child workers in the world.

Children are not commodities like narcotics that can be removed with a raid and then disposed of. They are little human beings trying to survive in a very hostile world. Bans only attempt to shut off the demand for child workers, paying scant attention to the causes for the increasing supply of children to the labour market such as mounting poverty, decreasing employment opportunities, increasingly elusive sources of livelihood, diminishing returns

⁷Article written by Nandana Reddy, Director Development, The Concerned for Working Children, Bangalore. Published in Deccan Herald, Bangalore on 15 October 2006.

from agriculture and years of drought and other natural disasters that leave families and whole communities a large percentage of India's population with no surplus to sustain them.

The ban approach only criminalises children and traps them between the abyss of poverty and starvation on the one hand and the harsh ministrations of over eager NGOs and the labour department trying to earn brownie points.

Children do not work because they enjoy doing so, but because they and their families have no other choice. As we have seen in the past, “liberating” a working child without providing her and her family with alternatives that are better than their present predicament only pushes that child into even more invisible and harmful employment. According to an old Chinese proverb, “If you save a man's life you're responsible for him thereafter”. When it comes to child workers, we feel our duty ends with liberating the child from employment, in the process violating several rights of the child, including their right to survival.

An example of this is the highly publicised raid on embroidery units in Delhi where some 500 boys aged between five and 15 were rounded up by an NGO and government officials. These children were locked up in an empty shopping complex for a week and fed leathery chapatis and watery dal. While the NGO and officials “decide what to do with them”, neither the government nor the NGO which carried out the operation had any concrete plans for the future of these children.

What the children and their families need most is a humane approach. An approach that does not snatch away their chances at survival, but provides real viable alternatives that ensure that these families can protect, care for and provide for their children all that is needed for their healthy growth and development.

Working children are not the problem. The root cause of their families' poverty and marginalisation are the real villains and until the Centre is willing to face this reality and solve these issues, child labour will only increase with India's eagerness to expand its global market.

Nevertheless, there are solutions to this very complex problem that are appropriate, viable and sustainable. The key to this is to tackle the supply side of the issue and;

1. Break up the problem into manageable portions. Decentralise the design, planning and implementation of the initiative to the level of Panchayats and municipalities and
2. Make the working children themselves a part of the solution.

In Karnataka working children sit together with gram Panchayats and members of the community and draw up five year plans that include strategies for solving basic causes of child labour. As a result, we, The Concerned for Working Children, have seen a marked reduction in the numbers of children working. When we began work in north Karnataka seven years ago each Panchayat had child labour figures running into four (around 1,800) digits and now they are only in the two (around 20) digits range. In Dakshina Kannada this approach has rendered Panchayats “child labour free”.

India needs to honestly evaluate the impact of its approach, especially on the children concerned and redesign interventions along with children and their families that keep their “best interests” as the primary focus and ensures that the solutions are child rights cantered.

'Out of work and into school'

Proposed Action Plan to Combat Child labour

15 Recommendations for Companies

Stop Child Labour School is the best place to work¹

Why should businesses take action against child labour?

In the Universal Declaration of Human Rights¹ it is stated that 'every organ of society' should contribute to ensuring that human rights are observed and implemented. This of course includes the business community. The Convention on the Rights of the Child (CRC)², which has been ratified by almost all countries worldwide, obliges states to 'recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education or to be harmful to the child's health or physical, mental, spiritual, moral or social development' (Article 32.1.CRC). National governments have committed themselves to incorporating this obligation in national legislation so that their citizens and organisations, including businesses, comply with international agreements at home, but also in operations outside their home markets.

The OECD Guidelines for multinational enterprises³ spell out what the national governments of OECD member states expect from the businesses sector both within and outside their home markets, and throughout their supply chains and this includes combating child labour. In the Guidelines, it is specified that businesses should encourage their suppliers and subcontractors to comply with them as well.

Furthermore, the United Nations' *Global Compact* spells out principles that businesses should adhere to including principle 5: taking effective action to end child labour⁴.

The two 'Conventions' on child labour of the International Labour Organisation (ILO), ratified by more than three-fourth of all countries, are the most explicit in specifying what combating child labour should amount to in practice. These are the Minimum Age Convention (No.138) and the Convention on the Worst Forms of Child Labour (No. 182). These Conventions have been jointly drafted in the ILO by national governments, employer's associations and trade unions. The business community is therefore politically and morally obliged to implement them. The Minimum Age Convention specifies that working is banned for children under the age of 15 (developing countries may opt for 14 years' of age); light work is allowed for 12-and-13-year-olds in most developing countries

¹Stop Child Labour: School is the best place to work, July 2007, About the campaign 'Stop Child Labour School is the best place to work' is based on the conviction that the Millennium Development Goals can only be achieved if all forms of child labour are eradicated and all children up to the age of 15 are given the opportunity of full-time education. The campaign aims to convince policy makers that they should close the gap between Millennium Goal 2 i.e., that all children receive at least five years of primary education and ILO Convention 138, which states that children should only be allowed to work from the age of 15. The campaign aim, therefore, is to achieve that, by 2015 every child receives formal, regular and uninterrupted education for at least 8 or 9 years. The campaign is being carried out by the Alliance2015 network of European development Organisations: Cesvi (Italy), Concern (Ireland), Deutsche Welthunger Hilfe (Germany), IBIS (Denmark), Hivos (the Netherlands) and People in Need (Czech Republic) in co-operation with three other organizations: the General Education Union (Algemene Onderwijsbond), FNV and the India Committee of the Netherlands (ICN). Contact details: c/o: Hivos, attn Jetteke van der Schatte Olivier Campaign Co-ordinator, postbus 85565, 2508 CG Den Haag, The Netherlands, Tel. +31 (0)70 376-5500

Website: <http://www.schoolisthebestplacetowork.org>

provided it does not interfere with their schooling. The Worst Forms of Child Labour Convention includes a ban on hazardous work for children under the age of 18. Of course this Convention also bans 'working' as a child soldier, in drugs trafficking, pornography and prostitution, and forced labour.

What action can businesses take?

1. **Make explicit in your company's formal policy or code of conduct that all forms of child labour falling under the two ILO Conventions will be avoided and, if need be, combated.**

This is not self-evident, because many companies feel it is enough to combat the worst forms of child labour. The ILO itself has, unfortunately, contributed to this attitude, focusing its project work in 80 different countries on the worst forms of child labour (also see: 'Seven reasons why the ILO should focus on all forms of child labour⁶'). Given that both Conventions against child labour have been ratified by so many nations, there is no conceivable reason why governments and companies should act only against some types of banned child labour.

2. **Make sure that company policy is based, at the very least, on the international conventions against child labour and comply with national and local legislation if their standards exceed those of the international conventions.**

So far, 149 countries have signed Convention 138, and 163 countries have signed Convention 182. Moreover, all ILO members have agreed that they have an obligation to respect, promote and realize the ban on child labour and comply with three other basic labour standards, even if they have not ratified the Conventions in question (also see recommendation 10). Where national legislation is more stringent, for example by imposing a higher minimum working age, companies are of course obliged to comply with such domestic legislation.

3. **Make it explicit in contracts with Contractually require your supplier(s) that they should eradicate child labour and realise labour rights across all sub-contracted operations.**

Child labour is widespread in operations that companies have outsourced to other businesses. Moreover, 'first tier' suppliers also frequently outsource manufacturing to sub-contractors. This is no coincidence. In their attempt to cut costs, many companies outsource some or all of their manufacturing and service operations to low-wage countries, most often to developing countries and/or countries in Eastern Europe. Such outsourced operations frequently involve child labour or fail to comply with other labour standards. Cutting cost, however, can never be used as an excuse by a company to dodge its responsibility when outsourcing manufacturing or service operations. Companies should therefore have a written contract with their suppliers to ensure that the entire supply chain is free from child labour, to facilitate that children are released from work and start going to school, and to observe and implement labour rights. Achieving this in practice will require that the outsourcing company has the names and full contact details of all suppliers and subcontractors, and makes them available to the public.

4. **Ensure that children hitherto employed at the company's own plants, plantations or service operations, or in outsourced or sub-contracted operations across the entire supply chain, are transferred to regular schooling at no cost to their families.**

Experience shows that companies acting against child labour frequently limit their involvement to merely seeing to it that the children concerned are removed and don't feel inclined to facilitate their transition to steady schooling. There have been several highly visible examples of companies keen to rid themselves of the children who worked for them in order to boost their public image. One recent example involved a

Child labour in cotton seed production in India: the accountability of companies

Multinationals like Bayer and Monsanto and many Indian companies as well, grow hybrid cottonseed in India on farms where child labour is rampant. In the cotton seed production, children often work 12 hours a day, are exposed to pesticides, and frequently have their living quarters in a barn on the farm. The companies that procure the produce have a responsibility for production conditions. Farmers are often paid only 60% of the level that would allow them to hire adults at the local minimum wage of €1,00 per day.

Multinational companies like Bayer and Monsanto have started to take action against child labour, but mainly in areas where local organisations have exerted pressure. Bayer and Monsanto have taken the following initiatives:

- *Sharing information: the companies share all information about their cottonseed procurement, providing, among others, full lists of the sites and farmers involved;*
- *Contracts between the companies and the farmers include a clause prohibiting employment of children under the age of 15;*
- *Joint inspection committees have been introduced at various administrative levels (sub-district, district, state) involving representatives of the companies and NGOs to monitor the implementation of the action plan. Joint inspection teams visit the farms and report violations to the district and state committees;*
- *Incentives and disincentives: suppliers who are found violating the ban on child labour in first instance receive a formal warning, second-time offenders receive 10% less for their produce by way of a fine, and third-time offenders instantly lose their right to supply under the existing supply agreement and receive no new orders. At the same time, suppliers who refrain from using child labour are paid a 5% bonus. Villages where all cottonseed farmers refrain from using child labour receive financial support;*
- *Rehabilitation education for former child labourers: Bayer and Monsanto support a foundation with the goal of launching motivation and encouragement centres in 20 villages so as to prepare former child labourers for their entry into the formal education system;*
- *Measures for the safe employment of child labour and yield improvement: special training courses are offered to farmers for this purpose.*

That said, it is clear from the recent 'Seeds of Change' report and an earlier report ('The Price of Childhood') that further improvement is needed: prices paid out to farmers are far too low, youngsters over the age of 14 (and adults) are made to work very long days and are exposed to pesticides, adults receive less than the minimum wage, labour unions are not involved in the Bayer/Monsanto initiative, and the schooling on offer is at present insufficient.

Dutch fashion label, which announced it intended immediately to sever all links with its supplier in India after the latter had been found to engage child labour. Businesses that simply make children 'redundant' and leave them to fend for themselves, behave highly irresponsible. Precisely because they have benefitted from children working for them, they have an even greater obligation to create or help facilitate the alternative to work i.e. education. 'Hybrid' solutions, for example having children do part-time jobs and provide for school in the evening, are fundamentally unacceptable. Every single child is entitled to full-time and comprehensive schooling not 'separate' but together with other children.

5. **Protect children in the ages of 14 to 18, who are permitted by international agreements to engage in paid work, against potentially hazardous and dangerous types of work as specified in ILO Convention 182, and comply with agreements (required by the Convention) on dangerous work between governments, labour unions and industry umbrella associations.**

Many children up to the age of 14 but particularly those aged 14 to 18 (and often beyond) fall victim to forced labour or prostitution, are made a soldier, or are engaged in hazardous work unfit for their age. Many examples can be found in industrial or service sectors. Considering that many children work in agriculture, yet another ILO Convention is relevant here: Convention 184 on Health and Safety in Agriculture, which includes, for example, protective measures required when working with chemicals (e.g. pesticides) and agricultural tools. One recent instance where such protection is not available is cottonseed production in India, where farmers growing cottonseed for multinational and Indian companies replaced some young children by teenagers up to 18 years old. The latter, however, are also exposed, without protection, to pesticide-spraying and the burning sun while working the fields for 12 hour or more at a stretch.

6. **Involve your own staff and your suppliers in combating child labour: inform them and involve them in your company's action plan against child labour.**

It is very important to involve your company's own employees in corporate policy which explicitly terms child labour as unacceptable both in the company's own operations and throughout its supply chain. Inform your employees about this ban on child labour and provide training to instruct them how they can contribute to the fight against child labour (also see the box on the IFC/World Bank). The same applies to your company's suppliers. Include a clause in your company's contract with suppliers or other parties with whom it wishes to collaborate that child labour is prohibited, and also specify what this prohibition means in practice at the very least an obligation to take concrete steps to facilitate that children who are taken out of the production system start going to school. Make binding agreements with suppliers to ensure that they, in turn, make sure their suppliers and sub-contractors meet the same standard.

7. **Collaborate and team up with other segments of society, for example trade unions and local and/or national governments, to realize full-fledged schooling for former child labourers**

Companies who find that their operations (or supply chains) involve large numbers of child labourers often find it very difficult or even impossible to get the children concerned to go to school. In most cases, companies should not attempt to set up or fund a school of their own, but team up with other organisations and jointly develop a more permanent solution. The preferred option, by far, is that former child labourers enter the regular education system. Where children cannot (immediately) enter a regular school, companies should, in cooperation with local authorities and civil society organizations, contribute to 'bridging' or 'transitional' education that enables somewhat older children to enter into the regular typically full-time schooling system. Research has shown that children who combine paid work with school do less well at school and run a greater risk of dropping out. Attention must be given to not create parallel

structures to formal schooling. Bridge school should only serve as transitional tool to mainstream children into formal fulltime education.

8. **Make a special effort where needed to address the specific challenges faced by children from discriminated and marginalised groups so that they, too, can make the transition from work to school.**

Many child labourers are from economically disadvantaged, discriminated and/or marginalised backgrounds. Children may be discriminated against because of the type of work done by their parents, their background, or the ethnic group or caste they belong to. Dalits ('outcasts') and Adivasis (tribals) in India, for example, are largely 'overrepresented' in child labour and even more so in bonded child labour. Many people feel it is 'normal' that children from such backgrounds are put to work and don't go to school, and sometimes this way of thinking is encouraged by local vested interests. Although most child labour is often officially prohibited by law, there is considerable social and political resistance to combating it in practice. Explicitly combating all types of child labour banned under the ILO Conventions, across the entire supply chain, will make it easier to reach Dalit and Adivasi children who might otherwise 'disappear', be it 'further up the supply chain' or in other types of work. In addition, a special effort is needed to ensure that these children join children from other backgrounds in regular daytime schooling and don't suffer discrimination at school. An additional effort is needed with a view to offering jobs to their parents or family members, who may need additional training and other types of social support to enable them to compensate for the loss of their children's labour.

9. **Ensure that the authenticity of age certificates is adequately verified, and jointly with other parties urge that reliable birth registration systems are set up in areas that don't have them.**

A child or youngster's exact age is often difficult to verify or even estimate. Age certificates may be false, particularly because many countries lack a reliable birth registration system. Age may also be assessed through other methods, for example a medical examination by a reliable physician, or through interviews to test a child's knowledge (e.g. has it finished elementary education?). In more general terms, companies could contribute to the development of reliable public birth registration systems, as these are frequently lacking. Together with employers' associations, trade unions and other actors in society, companies should be strong advocates for a birth registration system and thus speed up the introduction of such systems.

10. **Combating child labour must always go hand in hand with compliance with the ILO's other three fundamental labour standards⁶ and other broadly agreed-upon workers' rights.**

In addition to refraining from engaging child labour, the following generally recognized fundamental workers' rights should always be observed: freedom of association and the right to collective bargaining, the elimination of all forms of forced or compulsory labour, and the elimination of discrimination in respect of employment and occupation. These workers' rights are fundamental human rights. In addition, the following workers' rights are also generally acknowledged: the right to a safe and healthy working environment, a living wage, and no excessively long hours or forced overtime. A company which combats child labour cannot use that as a pretext for violating other workers' rights. But neither can companies justify employing children because of their parents' low income the latter being precisely the area where companies can make a difference (also see action recommendation 5).

For a broad vision on corporate social responsibility, refer to the 'CSR Frame of Reference' document (edition of June 2007), in which 36 civil society organisations in the Netherlands including the Dutch members of the 'Stop Child labour' campaign spell

out how they feel companies should honour their responsibility toward society at large⁷.

11. Pay a procurement price to suppliers that enables them to avoid using child labour and hire adults (or youngsters over the age of 15) instead, offering them decent pay and conditions. If need be, also adjust other elements of your company's sourcing policy with a view to implementing your company's 'no child labour' policy and ensuring that fundamental workers' rights are complied with.

Recent research on clothing and shoe manufacturing in Albania and cottonseed growing in India has shown that low prices paid by purchasing companies encourage child labour: low prices may induce suppliers to employ children, or cause parents whose earnings are insufficient for a decent life to put their children to work. Hence, procuring companies should not only demand that their suppliers refrain from employing children they will also have to create the necessary conditions that will enable their suppliers to implement labour rights. Price is an important prerequisite to consider, but other purchasing conditions are also relevant. Late orders or bad procurement planning on the part of the procuring companies put suppliers under pressure: fearing that no new orders may be forthcoming if they don't deliver on time, suppliers pull out all the stops to meet their deadlines making their employees work long hours and taking on child labourers as extra hands. In many cases companies should be able to tell readily if workers are compelled to put their children to work at home in order to meet a production deadline. If an adult can produce five pairs of shoes in a day on average but delivers 10, it should be obvious that standards are being violated.

12. Whenever possible, try to transfer the job hitherto done by children to their parents or other close relatives, or offer them alternative suitable employment.

It may not always be possible or even desirable to transfer a child's job to an unemployed parent or relative, but where this is an option, companies have a moral obligation to do so. Companies may also offer training to a parent or relative, to enable them to get a job at the company or elsewhere at no less than a 'living' wage. Another option, which has been put into practice by fashion manufacturer Levi Straus, is to continue to pay children their former wage on condition and as long as they go to school, and then offer them a job once they reach the 'working age'.

13. Create, independently or working with others, facilities such as crèches and daycare centres for employees, to help them keep their children out of child labour.

Many children, notably in agriculture and small-scale production facilities, are subjected to child labour or introduced to the work gradually because their parents start taking them along to their workplace when they're still very young. Pre-school and daycare centres can help to prevent that, while also providing playing and learning opportunities for children and freeing elder children from having to look after younger brothers and sisters, a duty which prevents them, and girls predominantly, from going to school.

14. Plan and implement pro-active investigations, a solid in-house monitoring system, transparency on policy and practice, independent monitoring and verification, and involve those directly concerned and/or affected (the 'stakeholders').

An adequate management system, which should include the above elements, is indispensable for any company wishing to credibly assert that its supply chain is free from child labour and does not violate other labour rights. This applies in particular to industries, supply chains and countries or regions where child labour is widespread.

In industries where child labour occurs, it is not enough to say that neither the company itself nor its suppliers use child labour. The motto should be: don't tell me,

show me! Companies should not passively wait for others to confront them with child labour practices or other violations of labour rights they should be proactive, and launch their own investigations, and /or have these conducted independently. Be transparent about the findings of such investigations, and state unambiguously what your company is going to do about it, independently or working with others. Civil society organisations and trade unions understand that child labour may occur in the supply chain, especially in those countries without compulsory education and weak, understaffed, absent or corrupt labour inspection services. In practice there is considerable appreciation for companies that are transparent about the issue, and take credible steps to tackle it. Verification of problems that have been identified, whether it be child labour or underpayment of workers, can only be credible if local organisations are involved in the monitoring process. This applies even more to making improvement plans, for example to phase out child labour and 'guide' the children to school.

Therefore, companies need to work with local governments, trade unions, and NGOs. A problem may be that such partners government bodies, unions and NGOs have little or no presence on the ground. In that case, companies should be able to demonstrate that they have done all they possibly could. One action they can take, for example, is to support capacity-building programmes of local unions and NGOs, and collaborate with them. If all else fails, the option of last resort is to pull out.

- 15. Participate in efforts to combat child labour in industries where child labour is rampant (stone quarries, tourism, cocoa, cotton (seed) and garment production, commercial agriculture - coffee, tea, rice, flowers etc. etc, through a so-called multi-stakeholder initiative and/or join, if your company is a multinational, an 'International Framework Agreement' with one of the sectoral global unions.**

In industries where child labour is endemic, the practice might be very difficult or impossible to tackle if a company acts on its own. The best option for companies in such sectors is to work through multi-stakeholder initiatives (MSI). MSIs are collaborative efforts of companies, trade unions and NGOs, and sometimes also involve the government, researchers and specialised institutes. MSIs have many advantages. For one, working together makes it far easier to share experiences in combating child labour. Secondly, companies can also share the costs of monitoring. Thirdly, and this is particularly important, by working together companies can create a new 'level playing field' in terms of costs when they, or their suppliers, have to hire more expensive adults. Finally, collaboration with unions is essential to give workers a say in fighting child labour and improving working conditions. However, multi-stakeholder initiatives should meet certain quality criteria. As stated, unions should be fully involved in the effort. Furthermore, the alliance should be aware of the risk that its most tardy members effectively set the pace of change. Therefore, transparency, the general public's 'right to know', independent investigation, and campaigns if need be, remain necessary ingredients of the overall effort so as to keep the members of the alliance focused. A good example of an MSI in the fashion industry is the Fair Wear Foundation.

Another potentially effective option would be for a multinational company to enter into an 'international framework agreement' with a global trade union federation that it routinely negotiates with, to spell out the labour rights to be observed (and avoiding and combating child labour!) for all its employees at all its sites around the world, whether in its own operations or in its supply chain.

The IFC (World Bank) on combating child labour

The International Finance Corporation (IFC) is a unit of the World Bank that provides project advice and funding to companies typically for major projects. The IFC has developed an extensive policy on CSR, and also provides advice on the implementation of fundamental labour standards including child labour. In its 20-page Good Practice Note 'Addressing Child Labor in the Workplace and Supply Chain'³ the IFC spells out several recommendations for combating the 'harmful' types of child labour. 'Harmful child labour' as such is not a term used in treaties and conventions on child labour, but the IFC says it coined the phrase in line with the recommendations of the Worst Forms of Child Labour Convention as well as the UN's Convention on the Rights of the Child. The IFC defines the term as follows:

'Harmful child labour consists of the employment of children that is economically exploitative, or is likely to be hazardous to, or interfere with, the child's education, or to be harmful to the child's health, or physical, mental, spiritual, moral or social development.' It is not made explicit in this definition if 'the child's education' refers to compulsory regular education. If that is the intended meaning, this would be an internationally accepted definition. Even so, it is unclear why the IFC has opted to use the term 'harmful child labour', as companies tend to interpret this as meaning 'the worst forms of child labour', which does not cover types of child labour that obstruct schooling.

Definition issues aside, the IFC has nevertheless made useful recommendations, including:

Implementation

- *Create a procedure for age verification of applicants as part of hiring policy;*
- *Establish a protocol for how to respond when harmful child labour is detected;*
- *Communicate the policy to employees, suppliers/contractors and the community;*
- *Obtain support of senior management and provide training to all senior staff;*
- *Cultivate a core group of committed staff to act as 'champions' of the issue;*
- *Provide training and awareness programmes to employees at all levels;*
- *Build accountability by assigning clear responsibilities at all levels;*
- *Reward staff for their efforts toward eliminating harmful child labour;*
- *Create a mechanism by which employees and others can report violations with the assurance of confidentiality.*

What to do if child labour is discovered?

- *Release children from work that is harmful;*
- *Enrol them in school;*
- *Reintegrate children with their families and communities in cases where they are alienated from them;*
- *Provide alternative income-generating activities for the parents or other adult relatives of those children who are relieved from harmful work;*
- *Address the physical and mental health of children working under harmful conditions;*
- *Create conditions that remove the need for children to do harmful work;*
- *Protect and educate children who work legitimately;*
- *Identify safe work with fair wages and healthy working conditions for working children who meet minimum age requirements.*

Finally ...

... not a recommendation but an appeal: don't allow yourself, as a company, either to be lured or fooled into thinking, or implored, convinced or told that child labour is a fact of life and that the company does something good by employing a child.

Employing even one child helps to perpetuate child labour. Combating child labour helps to create more jobs and better wages for adults and thus also to alleviate poverty!

Sometimes, local social pressure or heartbreaking individual circumstances may seem to suggest that the most humane or easiest remedy is to give employment to a young child that should be at school. But doing so would undermine the efforts of those fighting child labour and seeking to confirm and put into practice as a standard that societies should not tolerate it. Moreover, even in the direst of circumstances, the best solution is to hire a parent or other adult relative who would be entitled to a higher wage, can support the child, and can see to it that it receives a proper education.

July 2007

'Stop Child Labour School is the best place to work'

See: <http://un.org/Overview.rights.html>

See: <http://ohchr.org/english/law/pdf/crc.pdf>

See: <http://www.oecd.org/dataoecd/56/36/1922428.pdf>

See Global Compact website:

<http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/principle5.html>

See document 'Seven Reasons Why the ILO etc.': <http://www.indianet.nl/sevenreasons.html>

See ILO page: <http://www.ilo.org/dyn/declaris/DECLARATIONWEB.INDEXPAGE>

See CSR Frame of Reference of 36 Dutch civil society organizations:

[http://mvo-platform.tuxic.nl/files/Publicaties/MVO%20referentiekader-web%20\(2\).pdf](http://mvo-platform.tuxic.nl/files/Publicaties/MVO%20referentiekader-web%20(2).pdf)

See: [http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/p_childlabor/\\$FILE/ChildLabor.pdf](http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/p_childlabor/$FILE/ChildLabor.pdf)

Banning Child Labour is not Enough.....

Anita Haladi, Goa State Commission for Children¹

The eradication of child labour can be achieved only if we pay adequate attention to the rescue and rehabilitation of child workers. Before we make any attempt to address the problem of child labour we have to take into account the following:

Child workers are not a homogeneous group. Children work in different occupations and efforts to release/ rescue children from work should take this into consideration. For e.g., rescuing/rehabilitating a child working as a shoe-shiner or rag-picker will require a different strategy/approach as compared to rescuing a child engaged in domestic work/hotel industry, embroidery/zari industry, carpet industry etc.

Presently we tend to categorise child labour into hazardous and non-hazardous occupations (for legal purposes). For the purpose of rescuing child workers, we need to adopt a new categorisation. Child labour can be divided into visible (open) and invisible (closed-door) occupations. Visible occupations are those wherein children may be either self-employed (shoe-shining, vending, loading, etc.) or may be employed in work carried out in open spaces like road-side dhabas/tea-stalls, garages, shops, begging etc. Invisible occupations should include occupations like domestic work, any form of bonded labour like in the case of carpet making, zari/embroidery units/ brick-kilns, fish processing units, in hotels where children work in the kitchens, match-box, fire-cracker industries, etc.)

Protocols for rescue for visible (open) occupations should be different as compared to those used to rescue children working in invisible (closed-door) occupations. The rescue team must have an understanding of the nature of work that the child does and the relationship that the child has with the employer/s. The focus in each case should be to cause the least possible trauma/discomfort to the child/children being rescued. However, the strategies to be used need to be different. For instance, in case we are rescuing a child who is self-employed, there would be no need to include the police and the rescue team could consist of representatives from the concerned government department/s, NGO representative and a counsellor. But in cases where we are rescuing child/children from invisible occupations like domestic work, we need to have the police on the rescue team (in plain clothes) along with the other members.

Creation of a rescue team is essential but even more important is to de-bureaucratise procedures while rescuing child workers. Presently, though issues related to children are essentially looked after by the DWCD, when it comes to child labour, it is presumed that the responsibility to address this lies with the Ministry/Department of Labour. In order to avoid this confusion and to make rescuing child workers a real possibility, we should create a task force consisting of officers from key government departments like DWCD, Labour, Education, Health, Police, Prosecution, Tourism, Municipal Administration, Social Welfare, (any other). Creation of this task force is meant primarily to accept joint ownership and responsibility so that we do not function in a FRAGMENTED manner. The Task force can then collect data, information and prepare strategies relevant to their state/ village etc and also create rescue teams that are trained in order to professionally carry out rescue operations. The task force can then periodically review the progress made and also evaluate the strategies used and make recommendations for changes needed if any.

¹Anita Haladi is a child rights activist and presently the Vice-Chairperson of the Goa State Commission for Children (constituted in November 2004), her contact details: email id a_haladi@rediffmail.com and mobile number is 09890206637, # 4/S-2, Models Estate, Phase II, Caranzalem, Goa 403002, India.

The Task Force for each state should be headed by a representative from the State Commission for Children. In addition, at least two members of the State Commission for Children should be on the Task Force in order to contribute to strategy building, implementation and monitoring.

The rescue team should plan the strategy in advance and should consider all the possibilities/options BEFORE carrying out the rescue. The team has to be clear that the child may be scared/angry/confused and therefore, has to know how exactly to deal with the child's emotions and fears.

More importantly, the rescue team has to have an idea of what are the feasible immediate, short and long term rehabilitation options *before* they attempt the rescue operation.

The rescue team should ALWAYS speak to the CHILD being rescued while deciding rehabilitation options for her/him. The rescue team has to be empowered or trained in dealing with post-rescue trauma. The focus throughout the entire process of preparing plans, strategies, interventions, carrying out the rescue operations etc SHOULD be the BEST INTERESTS OF THE CHILD. The main aim of the rescue is to ensure that we END CHILD EXPLOITATION and that we are capable of providing the minimum standards for care and protection to every child in our country. For instance, it is easy to 'eliminate' child labour if the purpose of state-intervention in carrying out inspections/rescues is to set the records "clear" so that a particular state or village can be declared "CHILD-LABOUR FREE". Rescue operations with such a myopic focus that is totally misplaced can lead to an increase in child exploitation. The so-called rescued child will be back in labour/work situations and may become worse-off than before the intervention.

Rescue of child workers MUST be simultaneously followed up by rehabilitation. In order to have an effective rehabilitation policy, CONVERGENCE of efforts of government departments, government schemes (centre and state) is of paramount importance. For instance, the National Child Labour Project Committees, the Sarva Shiksha Abhiyan, the schemes for girl children, schemes created and implemented by the departments of social welfare, education, health etc. The Task Force should consider compiling a directory of schemes and funds and how these could be utilised for the purpose of rehabilitation of child workers. The same should be published and made available to all state governments and should be made public for the use of all those who work in the best interests of children.

Banning Child Labour is a desired goal that must be achieved through careful planning after having understood the causes, extent and nature of child labour. A comprehensive study with disaggregated data on the number of child workers and the kind of occupations that they are employed in is necessary. We need to look at alternatives other than placing children in institutions after rescue. The state of Goa has all the necessary ingredients..... A Children's Act that prohibits any form of child labour, a National Child Labour Project Committee constituted by the labour Commissioner's office, various government schemes, Child Rights NGOs and an enlightened citizenry.....what is lacking is collaboration and the creation of a zero tolerance for any form of child exploitation.

According to International Labour Organization (ILO) estimates, 15 percent of India's estimated 2.3 million commercial sex workers are children. They are sexually exploited in brothels, massage parlors, nightclubs, beauty salons, hotels, escort services, private houses as well as at railway stations, bus stations, streets, public parks and more recently in circuses.

While child sexual abuse is widespread, the unwillingness of adults to deal with the problem results in it remaining hidden and unreported, allowing offenders to commit the act again and again over long periods of time, with little risk of getting caught. The anonymity and unaccountability of the tourist make the link between tourism and child sex abuse pernicious. We have included in this section the a detailed framework and categories of action to be taken by Government in partnership with civil society organizations and other relevant actors for combating Commercial Sexual crimes against Children.

Pornography involving children is produced in one country, uses children taken from another country, while the destination of the final product could possibly be yet another country. Consequently, prevention and detection becomes difficult and requires international and inter-state cooperation. Further anonymity and unaccountability of the tourist make the link between tourism and child sex abuse particularly pernicious. The likelihood that abusers are booked or brought to justice therefore remains low. Legislation also has many loopholes and lacunae that allow traffickers and middlemen go scot free.

Alongside conventional reasons for trafficking such as poverty, disturbed family relationships, rise in broken families, another cause that is increasing trafficking in tourist areas is the glamour attached to the industry itself. The tourism industry by adding pressure on the available resources, alienate and displace people from the traditional livelihoods and the glitter of tourism pulls them, particularly children, towards the easy money of prostitution.

Sexual abuse and exploitation of children needs to be considered a very serious crime and to impose very severe and deterrent punishment to the offenders, Indian and foreign. We call upon the Government to come up with a comprehensive Act which deals with child abuse and exploitation taking into account the child abuse in the context of tourism. The Offences against Children Bill remains in draft stage since 2005. The Government also needs to come up extradition laws to ensure that perpetrators of crimes who are foreigners are brought to book and to ensure that no foreign escapes punishment by leaving this country.



Sexual Exploitation, Pornography and Trafficking of Children in Tourism

Global Monitoring Report on the Status of actiona gainst Commercial Sexual Exploitation of Children

Global Monitoring Report¹ on the Status of Action Against Commercial Sexual Exploitation of Children was launched by End *Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purpose (ECPAT) International*¹ and by members of ECPAT in India - *Indian Committee of Youth Organizations (ICYO) Delhi, Sanlaap Kolkata and EQUATIONS Bangalore* on 30th July 2007 at Delhi

Ten years have passed since the First World Congress against Commercial Sexual Exploitation of Children (CSEC) was held in 1996 in Stockholm, Sweden. The Stockholm Congress was a landmark event, providing testimony that convinced the world that sexual violations against children exist in all nations, irrespective of cultural differences or geographic location. It marked the first public recognition by governments of the existence of CSEC and resulted in a commitment to a global Declaration and Agenda for Action, which was formally adopted by 122 governments, as a guide to the specific measures that must be taken for counteraction.

It seeks to contribute to other international mechanisms that exist to protect children's rights; the *Convention on the Rights of the Child (CRC)* and the *Optional Protocol on the sale of children, child prostitution and child pornography* so as to strengthen the implementation and action against commercial sexual exploitation of children at all levels.

Important objective of this reports is to stimulate the exchange of experience and knowledge among countries and different actors to create a dialogue that can further work against CSEC. While much has been achieved over the last 10 years, many gaps still remain. The implementation of the Agenda for Action is urgently required, for as the reports clearly illustrate, there is a compelling need for global action to protect children from these inhuman violations.

The **Agenda for Action against CSEC** provides a detailed framework and categories of action to be taken by government in partnership with civil society organizations and other relevant actors for combating commercial sexual crimes against children. Broadly, these actions are focused on:

1. Coordination and Cooperation
2. Prevention
3. Protection
4. Recovery, Rehabilitation and Reintegration and
5. Child Participation.

The Agenda for Action is thus the formal and guiding structure used by government that have adopted it and committed to work against CSEC.

The report aims to provide a baseline of information on actions taken and remaining gaps for addressing CSEC in each country, based on the framework of the Agenda for Action, to enable more systematic assessment of progress on implementation of this commitment.

¹ECPAT International have analyzed the ten years work progress and published the country 'Monitoring Reports' worldwide. In this series, the four south Asian country (Nepal, Bangladesh, Sri Lanka and Pakistan) reports were launched in Kathmandu, Nepal on February 8, 2007.

Experience demonstrates that the level of responsibility and role that a government takes to set and uphold standards of protection, like the lead taken for protecting children's rights, determines the nature, quantity and quality of what the country achieves for its children.

Another important objective of these reports is to stimulate the exchange of experience and knowledge among countries and different actors to create a dialogue that can further work against CSEC.

A Serious Situation

1. India is a significant sources destination and transit country for trafficking and CSEC. Cross border between 5,000 & 7000 Nepalese girls and 200,000 Bangladeshi children are estimated to be trafficked into India.
2. Children are trafficked to and from states such as Andhra Pradesh, Bihar, Karnataka, Uttar Pradesh, Maharastra, Madhya Pradesh, Rajasthan and West Bengal.
3. The trafficked girls showed severe impacts on their health, with 32.3 per cent of respondents suffering from diseases such as HIV/AIDS, sexually transmitted infections (STIs) and other gynaecological problems. A large number of boys living on the streets are victims of sexual exploitation, and the average age of boys being forced into exploitation is approximately 12.5 years or younger.
4. India presents enough evidence to suggest that a significant number of girls rescued from commercial sexual exploitation are re-trafficked, which exposes serious flaws in existing programmes on rescue, return, rehabilitation and reintegration of victims.
5. Children from ethnic minorities highly affected by CSEC -more than 40,000 tribal women and children (mostly from the States of Orissa and Bihar) were forced into economic and sexual exploitation due to their marginalisation and lack of access to resources.
6. A budget analysis recently conducted by the MWCD revealed the low level of funds allocated and prioritisation of child protection. The total share for child protection in the Union Budget for 2004-2005 was only 0.030 per cent and 0.034 per cent for 2005-2006, while the budget estimates for 2006-2007 remained the same.

Tightening the loopholes in the legal and policy landscape

7. There are significant gaps between Indian laws on trafficking and international and regional standards for the protection of children. India has not ratified the Trafficking Protocol.
8. The Penal Code's prohibition on selling or buying a minor for purposes of prostitution fails to include many other activities related to trafficking prohibited by the Trafficking Protocol, such as recruiting, harbouring, transporting, transferring or receiving trafficked children. The Indian Penal Code prohibits importing a foreign girl for purposes of illicit sex, but offers no protection for girls from India or boys from any country. Amendments to ITPA that would more specifically define and prohibit trafficking have been proposed but are not enacted yet.
9. Unclear legal definitions limit the protection of children against child pornography. Indian has three laws such like Indecent Representation of Women (Prohibition) Act 1986; the Penal Code; and the Information Technology Act 2000 but none of these laws specifically refer to children, define or prohibit child pornography and Indian laws do not meet international standards to protect children against pornography.
10. Indian does not have extraterritorial legislation that can be used to prosecute Indian nationals who commit crimes related to the CSEC outside of India. It is only in Goa which has formed a model law, the Goa Children's Act which specifies that any such offences are not eligible for a bail as well as the fine and bail terms are also severe.

11. The Juvenile Justice Act provided for the establishment of a special Juvenile Police Unit authorised to deal with children, but child protection units have not been formed in most States. Every police station should have at least one specially-trained officer designated as the 'juvenile or child welfare officer responsible for handling cases involving children in need of care and protection or in conflict with the law.
12. The Child Welfare Committees (CWCs) have proved to be effective structures to reach and assist children in need of care and support. More CWCs are required at district level. Existing committees still lack the required expertise as prescribed in the Juvenile Justice Act and their coordination with the police, the State and the Central Advisory Committees needs to be enhanced.

Key Recommendations

1. State Advisory Committees must be made functional in all states to allow for the effective implementation of India's Plan of Action to Combat Trafficking and Commercial Sexual Exploitation of Women and Children. Action planning at state level should also be expedited. The budget allocated for National Plan of Action (NPA) implementation at both levels must be increased.
2. Larger number of Child Welfare Committees need to be set up at district level, with properly trained staff who are equipped to deal with CSEC cases; their coordination with law enforcers as well as with the State and the Central Advisory Committees must be enhanced.
3. More in-depth studies on the commercial sexual exploitation of boys are needed to support effective campaigns and interventions against this phenomenon. A national level network/forum on prostitution of boys should also be established as the foundation for adequate responses, exchange of information and programme intervention.
4. To prevent re-trafficking and further exploitation of CSEC victims, reintegration programmes such as the Kishori Shakti Yojna, initiated by the Ministry of Women and Child Development, should be widely replicated in the most affected state districts, including UttarPradesh, MadhyaPradesh, Rajasthan, Bihar and Haryana.
5. India must ratify the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking Protocol) and ILO Convention No. 182 Convention Concerning The Prohibition And Immediate Action For The Elimination Of The Worst Forms Of Child Labour
6. India's laws on child pornography must be amended to clearly define and prohibit child pornography according to the standards set forth in the Optional Protocol, which India has ratified. The scope of the laws must extend beyond visual representations and cover audio materials and simulated images. Further, boys must be granted legal protection against child pornography.
7. The Information Technology Act must be amended to criminalise all acts of producing child pornography for the purpose of offering, making available, distributing, transmitting through a computer system; using computer systems and other information technologies to groom children; as well as possessing child pornography on a computer system. As one of the leading nations in the development of new technology, India can no longer ignore the abuse of children that information and communication technology (ICT) is facilitating.
8. Systematic training of police officers assigned to deal with crimes against children to ensure the child is not left more vulnerable. Capacity building of the police, government departments and local NGOs to address child pornography is also recommended.

Child Pornography: an International Perspective

This paper was prepared as a working document for the World Congress against Commercial Sexual Exploitation of Children by Margaret A Healy for ECPAT

EXECUTIVE SUMMARY

Child pornography is a problem of international proportion. The global community has recognised that children are at risk from those who engage in the production, exhibition, distribution, and consumption of child pornography and that children can suffer serious negative effects as a result of pornographic exploitation. The United Nations Convention on the Rights of the Child ("UNCRC"), which has been ratified by an overwhelming majority of the nations of the world, identifies child pornography as a violation against children and requires that nations who are parties to the convention take measures to prevent the exploitative use of children in pornographic materials. Despite the notable efforts of many nations, child pornography remains a serious issue.

Challenges to any study of international child pornography include: 1) the lack of any uniform definition of what child pornography entails; 2) lack of data regarding the production and distribution of child pornography in many parts of the world, particularly Africa and Latin America; and 3) shifting global patterns of production and consumption of child pornography.

Furthermore, the development of home video equipment and computer technology has revolutionised the international production and distribution of child pornography. Rapidly expanding international access to increasingly inexpensive technology has transformed child pornography into a sophisticated cottage industry. Computer alteration of images and the potential for creating computer generated pornography pose formidable challenges for courts and law enforcement officials throughout the world.

This paper begins by providing a definition of child pornography, examining the scope of the problem, and describing the characteristics of both victims and exploiters. It presents a discussion of the uses of child pornography and of the effects that child pornography may have on both child victims and on potential and actual offenders.

The paper also identifies some of the major centres of global production and consumption of child pornography and spends considerable time discussing the impact of computer technology on the production and distribution of material that sexually exploits children. The remainder of the paper is dedicated to a discussion of individual national strategies designed to counter both traditional and computer child pornography through regulatory measures. While only a small number of countries can be surveyed due to space considerations, this paper assumes that child pornography is a pressing problem on local, national and international levels and that all nations have an important part to play in the solution.

I. DEFINITION OF CHILD PORNOGRAPHY

The question of what constitutes child pornography is extraordinarily complex. Standards that are applied in each society or country are highly subjective and are contingent upon differing moral, cultural, sexual, social, and religious beliefs that do not readily translate into law. Even if we confine ourselves to a legal definition of child pornography, the concept is elusive. Legal definitions of both "child" and "child pornography" differ globally and may differ even among legal jurisdictions within the same country.

The legal definition of a "child" varies among nations. The UNCRC defines a child as a person under 18 years of age. This definition, however, is far from being universally adopted. For example, in all Australian States and Territories, child pornography legislation defines "child" as a person under 16 years of age. In Canada (Penal Code Sec. 163), a minor, for purposes of child pornography, is a person under 18 years of age. In various jurisdictions of the United States (U.S.), minors as young as 15 may legally consent to sexual activity with an adult. However, that same adult could not create, distribute, or possess a visual record of that activity because federal child pornography statutes (18 U.S.C. 2252, 2256) define a minor as any person under that age of 18 years.

Despite national differences, some international bodies have been able to arrive at common definitions of child pornography, most of which focus on visual, rather than written material. The Council of Europe defines child pornography as "any audiovisual material which uses children in a sexual context." Council of Europe, *Recommendation R(91)11 and Report of the European Committee on Crime Problems* (1993). International Criminal Police Organisation ("INTERPOL") delegates define child pornography as "the visual depiction of the sexual exploitation of a child, focussing on the child's sexual behaviour or genitals." *Interpol Recommendations on Offences Against Minors*, INTERPOL 61st General Assembly (1995).

For the purposes of this paper, recognizing that each country's legal definition of "child" may be different, the term "child pornography" will refer to a "sexually explicit reproduction of a child's image." Kenneth V. Lanning, *Child Molesters: A Behavioural Analysis* 24 (1992). Child pornography is to be distinguished from "child erotica" which is "any material relating to children that serves a sexual purpose for a given individual." *Id.* at 26. Child erotica includes such items such as toys, games, children's clothing, sexual aids, manuals, drawings, catalogues, and non-pornographic photographs of children. Child erotica is not illegal but is frequently used by prosecutors as corroborating evidence in cases against child molesters. Some experts distinguish "sexual molester" or "abusers" from "sexual exploiters" employing the term "sexual exploitation" to describe only commercial interactions or to distinguish extra-familial abuse from that which occurs within the family. The terms "child molester" and "child abuser" will be used interchangeably in this paper to denote a significantly older person who engages in sexual activity with someone who is legally a child. The term "child exploiter" will include those who sexually molest children as well as those who sexually exploit children through the production, distribution, and/or collection of child pornography. or child pornographers.

The definition of child pornography, in some countries, is harm-based. For example, U.S. law, which is characterised by an elaborate commitment to the protection of free speech, has addressed the issue of child pornography from the perspective of preventing harm to child victims rather than censoring expression. Child pornography is criminalised in the United States because it represents "the permanent record of the sexual abuse or exploitation of an actual child." Lanning, *supra* note 3, at 24. As stated previously, it may be legally permissible to engage in sexual activity with a 16 or 17 year old in some jurisdictions. The filming of that encounter would be illegal under federal law but the depiction could not be considered a record of the abuse of a child. The Films, Videos, and Publications Classification Act (1993) promulgated in New Zealand makes similar reference to child pornography as a "permanent recording of the exploitation of children or young persons for sexual purposes." The approaching technological capacity to produce lifelike computer generated pornography will challenge such harm-based definitions of child pornography.

II. SCOPE OF THE PROBLEM

Child pornography is an international phenomenon. Most of the data that exists regarding the extent and nature of the problem has focussed on North America and Northern Europe-regions which have played a key role in the production, distribution and consumption of child pornography. "The U.S. market for child pornography is widely thought

to be the most lucrative in the world." *Child Pornography and Paedophilia: Report Made by the Permanent Subcommittee on Investigations, U.S. Senate, 99th Cong. 2d Sess. 34 (1986)* [hereinafter U.S. Senate Report]. In developing countries, the reality of child pornography is dwarfed by the magnitude of other problems such as poverty, infant mortality, illiteracy, hunger, and disease and often there is little reliable data on the subject. Nonetheless, the pornographic exploitation of minors is a phenomenon that exists throughout the world.

1. Identifying the Victims

Girls and boys of all ages, including infants, are used to produce pornography around the world. Estimates of the number of children worldwide involved in child pornography range from thousands to hundreds of thousands. While impossible to obtain accurate data, a perusal of the child pornography readily available on the international market indicates that a significant number of children are being sexually exploited through this medium.

As to the gender of the victims, Federal Bureau of Investigation ("FBI") personnel estimate that over 50% of all child pornography seized in the United States depicts boys rather than girls. Canadian Customs puts that figure at 75% for Canada. The data regarding childhood sexual abuse in most countries, including the U.S. and Canada, does not reflect the same predominance of boy victims. Virtually all studies have found higher sexual abuse rates for girls. Ann Wolbert Burgess & Christine A. Grant, *Children Traumatized in Sex Rings*, 4 (1988). In contrast, in Japan, it is female minors that are predominantly exploited in pornographic material. The gender of the child victims displayed via computer networks is constantly in flux and difficult to determine with any precision.

In most countries, street children, poor children, juveniles from broken homes, and disabled minors are especially vulnerable to sexual exploitation and to being seduced or coerced into the production of pornographic material. These children, however, are not the only victims. Sex exploiters frequently target neighbourhood children or those with whom they have contact through their vocation or avocations. Additionally, pornographic activity is a common part of life for teen prostitutes. Finally, in many countries, including developed nations, child victims may come from homes where their own parents use them to create child pornography or where their parents offer them to others for the same purpose.

Sex rings, which involve the simultaneous sexual exploitation of more than one child but are not necessarily commercial, exist in many countries and frequently involve the use of children in the creation of pornographic material. In the United States, they consist largely of loosely organized child abusers. According to one 1989 study, 31 sex rings were identified by police in the United Kingdom over a two year period in a geographically defined population of 710,000.

2. Identifying the Exploiters

Child exploiters and pornographers represent a cross-section of the larger community including highly esteemed members of the population. Furthermore, they frequently seek occupations that bring them into habitual contact with children. Producers (including photographers, publishers and creators of home videos), middlemen (including procurers and parents), distributors, (including advertisers and those who trade) as well as child pornography collectors, are included in the category of exploiters.

Paedophiles constitute a significant sector of the offenders. The American Psychiatric Association defines paedophilia as a disorder in which an adult's primary sexual attraction is to prepubescent children, generally age 13 and under. American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders: DSM-IV* 527-28 (1994). Because this is a psychiatric diagnosis, and because it is impossible to fix pubescence at any exact age, law enforcement agents often employ a broader definition of paedophilia to include adults with a sexual preference for individuals legally considered children. Lanning, *supra* note 3, at 2.

This paper employs the broader law enforcement definition with the understanding that the definition may include a large number of individuals with an attraction to pubescent teenagers--a condition which is not considered a psychiatric disorder in most countries. Additionally, the broader definition does not concentrate attention on a sector which societies consider "abnormal" while ignoring a much larger segment of society that may participate in the production and consumption of pornography.

Some paedophiles are attracted to children of the same sex, but the majority of paedophiles are heterosexual. Additionally, it is important to note that not all paedophiles are child molesters and that many child molesters are not paedophiles-even under a broad definition. The term "preferential child molester" can be used to distinguish those paedophiles who act on their impulses and sexually abuse children from those who simply fantasize about sexual activity with children.

Child pornography serves significant purposes for both paedophiles and child molesters. Preferential child molesters often possess large collections of child pornography that are meticulously catalogued and carefully guarded. They, however, are not the only ones who produce or consume child pornography. A much broader segment of the population is interested in pornography featuring pubescent children in their teens. Additionally, with the emergence of the use of computers to traffic in child pornography, a new and growing segment of producers and consumers is being identified. They are individuals who may not have a sexual preference for children, but who have seen the gamut of adult pornography and who are searching for more bizarre material.

III. GLOBAL PRODUCTION AND CONSUMPTION OF CHILD PORNOGRAPHY

The worldwide flow of pornography is difficult to describe with any precision but a brief examination of some of the major international production centres offers a sense of the global supply and demand. In Asia, Japan is the most important centre for the commercial production of child pornography, producing a significant and increasing amount of "teen pornography" that depicts young Japanese girls in sexually explicit poses in teen magazines. Peter Constantine, *Japan's Sex Trade: A Journey Through Japan's Erotic Subcultures 184-88* (1993). Japan also produces millions of erotic comics that are targeted at young students and readily available in vending machines in most Japanese cities. Japanese child pornography reflects a special appeal for sex with Japanese girls who are often depicted in school uniforms. Pornography involving pre-pubescent children is also available commercially in Tokyo.

Japanese child pornography is distributed in Asia and worldwide. U.S. law enforcement officials in California report seizing material depicting the exposed genitals of pre-pubescent Japanese children. Canadian Customs reports that pornographic materials involving Japanese children are found in the possession of crew members of Japanese cruise ships. Japanese child pornography is also circulating on the Internet. The Yakuza, Japanese organised crime, previously controlled the sex industry in Japan. Some commentators report that tough Japanese anti-mob laws, however, have loosened the Yakuza's grip in recent years. *Id.* at 13-14.

The early 1970's marked the heyday of commercial production of child pornography in the Western world. Denmark, Holland, and, to a lesser extent, Sweden, were the main centres of production in Europe. Most of the children depicted were Caucasian. Many who were featured in European child pornography magazines were photographed in the United States and the photos were published in magazines assembled abroad. Some of the material produced in Europe during the 70's, however, included children from India and Mexico and one series included black children from Africa. Telephone interview with R.P. (Toby) Tyler, Sheriff's Sergeant, San Bernardino County Sheriff's Department (March 1996). By the mid-70's, commercially distributed child pornography became widely available in the United States and Europe.

The late 1970's and early 80's brought increased governmental regulation, first in the United States and later in Europe. As a result, commercial distribution is no longer a major means of circulating such material. The majority of child pornography disseminated internationally is, in fact, exchanged between paedophiles and child molesters without any commercial motive. Furthermore, while there is evidence that organised crime is involved in adult pornography, the same is not generally true in regard to child pornography. Pornography produced using underage models resembling adults (sometimes referred to a "technical" child pornography), however, accounts for a small portion of pornography controlled by organised crime.

"The overwhelming majority of child pornography seized in the United States has not been produced or distributed for profit... Instead, the cost must be measured in terms of the sexual exploitation of children represented by child pornography, and the sexual abuse of children to which child pornography is a central contributing factor. It is not necessary to view child pornography as a hugely lucrative, organised crime-controlled underground in order to appreciate the scope of the damage to society caused by this reprehensible practice." U.S. Senate Report, *supra* note 7, at 43.

While it is true that the availability of commercial child pornography has declined, there are those who continue to profit from its production and distribution. Commercial production and consumption still exists in both Europe and the United States, as well as in Japan. Additionally, "amateur" pornographic material is being produced in many countries including Mexico, the Philippines, and Brazil (often utilising street children) for importation into North America. The distinction between "amateur" and "commercial" child pornography is far from clear. Once child pornography enters the public sphere, even if by trade or gift, it becomes available to anyone who chooses to use it for monetary gain. Liz Kelly, et al., *Splintered Lives: Sexual Exploitation of Children in the Context of Children's Rights and Child Protection*, 16 (1995).

A further source of child pornography distributed worldwide is that created by sex tourists who travel to other countries to have sex with minors. Most of the child victims of sex tourism reside in the developing nations of the world. In March 1996, a court in Thailand convicted a German national of child molestation and production of pornography for commercial purposes; he was involved in a child pornography ring which exploited Thai children. Letter from the International Cooperation In Criminal Matters Division, Office of the Attorney General, Thailand (March 20, 1996). Until approximately two years ago, a sizable portion of the pornography seized in Sweden and in the Netherlands was produced by sex tourists visiting Asia. Some of that material has now been replaced by child pornography produced in Eastern Europe. Telephone Interview with Helena Karlén, Swedish Save the Children (March, 1996) Members of the military assigned to other countries have also played a role. According to the U.S. Justice Department, military personnel stationed in Guam and the Philippines have been prosecuted for possession of child pornography. Often the same personnel have participated in the production of the material.

The development of new technology has made a tremendous impact on the international production and distribution of child pornography. The first important leap in technology was the video camera. Video cameras and camcorders are now less expensive and are relatively common in many homes in industrialised countries. Because the recording media does not have to be commercially processed, and can be easily duplicated, individuals enjoy complete privacy. As a result, amateur pornographic videos have become increasingly common.

In the United Kingdom, detecting the possession and distribution of pornographic home videos featuring children continues to be an important priority of law enforcement officials. Likewise, most of the new child pornography currently seized by the U.S. Postal Service is still contained in homemade videos. U.S. officials believe, however, that with the advent of

advanced technology, it will be just a matter of time before this amateur materials will be available on the Internet.

IV. THE INTRODUCTION OF COMPUTER TECHNOLOGY

Computer technology has transformed the production of child pornography into a sophisticated global cottage. The term is used here to denote that technology has facilitated the production and distribution of child pornography in the home. industry. Anyone who has access to a computer and a modem potentially has access to commercial on-line services and to the Internet, a remarkable global network of nearly 30 million persons joined by computers. Among many other things, such access means that it is possible both to send and receive pornography. The Internet is becoming an increasingly significant factor in child sexual exploitation and the development of increasingly inexpensive personal computers and modems has given ascent to what is rapidly becoming the most important exchange medium for child pornography.

A brief review of the new computer technology and its possibilities will offer an idea of the revolution that has occurred.

Pictures can be scanned and video clips can be captured into a computer without any loss of quality either over time or when copies are made. It is now possible to attach these images and video clips to e-mail text. Non-colour digital cameras are available in the United States for US\$99 and colour scanners (devices that can convert photographs, slides, negatives, and text into computer characters) for US\$200. A video capture device is available for US\$129. This device makes it possible to record images from a video camera or a VCR directly into the computer. A new generation of "Internet dedicated" computers are being developed with a targeted price of US\$500.

Anonymity is available on the Internet. A user can manufacture virtually any identity and route a message from Pennsylvania, through Australia, to Germany and then to Kansas where it would be impossible to determine the origination. It is also possible to re-route e-mail and images through what are referred to as "anonymous remailers." These take incoming messages and remove the source address, assign an anonymous identification code number with the remailer's address, and forward it to the final destination. Responses to the anonymous messages are then similarly encoded and the responder likewise remains anonymous. The most popular of these "remailers" among on-line paedophiles is located in Finland.

The industry is experiencing a rapid development in cheap, user-friendly encryption software which is employed by child pornographers. Decoding the files is often extremely difficult for law enforcement agencies.

The Internet can be used to make contacts with other paedophiles and child molesters and is used to distribute home made and commercial child pornography around the world. An individual may now trade and/or sell images of almost any kind from one end of the world to the other.

Even if law enforcement officials discover the image, the ability to distribute it may not be impaired. Once an image is introduced on the Internet, it can be downloaded by any number of users and can be reproduced repeatedly without any loss of quality.

Advanced technology is making transmission increasingly faster. High speed modems of 28,800 bits per second ("BPS") are currently available but soon it will be possible to boost that capacity to 550,000 BPS via high speed modems using cable television wire. This is significant because transmission and downloading of images can be time consuming and therefore costly.

Computer bulletin boards can be set up exclusively to exchange information about sexual interest in minors or specifically to allow for running conversations by computer on such subjects. Monitoring of such sex oriented bulletin boards has indicated that these boards receive thousands of calls. In most countries, neither licences nor registration for bulletin boards is required.

Letter writing by paedophiles, extensive in the past, is now being replaced by much more rapidly transmitted computer conversations. Despite increasing use of computers by paedophiles, according to the U.S. Postal Service, pornographers still rely heavily on the mails to exchange video tapes and computer diskettes.

Computers now come with built in microphones and speakers and will soon be routinely equipped with cameras. Monitors also frequently come with built-in speakers and microphones. This equipment will enhance the capacity for production and distribution of home videos.

Images can now be altered by computer. For example, it is not difficult to add objects to an image. One can also delete objects or parts of a photo. An individual may superimpose a child's face on an adult's body, erase pubic hair or facial hair, and reduce and minimise breasts so as to make adult images look like children.

While it is still impossible to create entirely computer generated images that appear lifelike, it is, however, possible to insert digital images of a person into a video in which they have not appeared. Technology will soon be able to facilitate the creation of lifelike child pornography without using any real children at all.

Furthermore, on-line capability greatly increases the possibility of extended contact--up to hundreds of hours--with children, by child molesters or paedophiles. Sex exploiters have easy access to children via computer--especially lonely or troubled teens--by tuning into chat sessions, such as Internet Relay Chat, and making contact with children. The most commonly used technique for seducing the child into sexual activity is by capitalising on the child's natural need for attention, affection and approval. According to the FBI and other law enforcement agents, a small but rising number of these computer relationships end up with actual contact and sexual activity with the teen.

The problem of computer child pornography involves persons who have the time, the resources, the intelligence and perhaps a compulsion to acquire expertise in the technology. They are from every walk of life. Children in many developed countries are some of the most sophisticated computer operators. They have grown up with computers and have often far surpassed their parents in expertise. These children already have fairly easy access to computer child pornography and are potentially accessible through the Internet and some commercial on-line services to those who wish to sexually exploit minors. In addition, software programs which are designed to block children's access to questionable material are capable of being defeated by children who have acquired advanced computer skills.

Computerised child pornography is of the highest concern in industrialised countries where computers have become commonplace in schools, in the workplace and in the home. Access to computers, however, is increasing globally. In Australia, according to a 1995 survey, only about 10% of Australian residences had the necessary computer and modem for obtaining child pornography on line. Nonetheless, Australian law enforcement officials agree that as computers become more available and user-friendly and as the computer literate population steadily rises, the use of home computers to produce and distribute child pornography will increase.

V. USES OF CHILD PORNOGRAPHY

Experts cite several reasons why individuals collect child pornography. U.S. Senate Report, *supra* note 7, at 10-12.

1. Arousal and gratification: Individuals use pornography to stimulate their sexual drive and to aid in sexual stimulation. Some may only fantasise and others may use it as a prelude to actual sexual activity with minors.
2. Validation and justification of paedophile behaviour: The paedophile uses pornography to convince him/her self that their behaviour or obsession is not abnormal, but is shared by thousand of other sensitive, intelligent and caring people.
3. To lower a child's inhibitions: Child abusers use pictures of other children having sex to assist in the seduction of a child and encourage reluctant children to freely participate. Images are often used as a way to show a child what the offender wants the child victim to do. Pornography may be used under the guise of "sex education" to create sexual arousal in the child.
4. Preservation of the child's youth: Child pornography ensures that there will always be an image of the child at the age of sexual preference.
5. Blackmail: Sexually explicit images are used to ensure the lifelong silence of the victimised child by threatening to show the pictures to parents, peers or others. Child victims will not always report pictorial records-even if they report sexual abuse-because they may be ashamed of what happened to them as well as of their participation in the pornography.
6. A medium of exchange: Child pornography is used as a means of establishing trust and camaraderie with other paedophiles and molesters and as proof of their good intentions when establishing contact with other exploiters. It is a medium of communication with fellow exploiters in public and private sex markets.
7. Access: Some exploiters exchange pornography to gain access to other markets and to other children.
8. Profit: Although most do not sell child pornography, there are some paedophiles and child molesters who sell home-made videos and photos on a one-to-one basis. Some child exploiters sell their self-produced materials to finance trips overseas to popular sex tourist destinations.

Arguably then, child pornography does not merely involve the abuse of the individual child victim depicted, but rather can be used to perpetuate the sexual exploitation of other children who have not been pornographically exploited. Furthermore, child pornography serves to desensitise society and to send a message that children are legitimate sex partners.

VI. THE CONNECTION BETWEEN CHILD PORNOGRAPHY AND CHILD SEX ABUSE CRIMES

Considerable controversy exists within the social and behavioural science community about the negative effects, if any, of child pornography upon the behaviour of potential or actual offenders. The main reason for the debate is that it is virtually impossible to conduct research in the laboratory using standard scientific methods which yield statistically reliable results. The constraints of ethical research, false reporting, interviewer distortion and a whole host of other problems contribute to the difficulty of acquiring scientific results. Many researchers have come to the conclusion that there is no sound scientific basis for concluding that exposure to child pornography increases the likelihood of sexual abuse

of children. Others have suggested that there is a consistent correlation between the use of pornography and sexual aggression. Some social scientists interpret the research to indicate that the use of child pornography is a precursor to other sex crimes and that child pornography is fuel to feed the obsession of paedophilia; *Child Pornography and Sexual Exploitation: European Forum for Child Welfare Position Statement*, 3 (Nov. 1993) [hereafter EFCW Position Statement] (citing studies that support this thesis). others conclude that it is a safety valve that prevents such crimes. Kutchinsky, B., *The Effect of Easy Availability of Pornography on the Incidence of Sex Crimes: The Danish Experience*, *Journal of Social Sciences*, 29:3, 163-81 (1973); see Daniel Lee Carter, et al., *The Use of Pornography in the Criminal and Developmental Histories of Sexual Offenders*, *Journal of Interpersonal Violence* 207 (June 1987).

Law enforcement agencies also have differing opinions. In 1995, several Australian law enforcement agencies testified in hearings on organised paedophile activity that "there was a significant likelihood that a person in possession of child pornography was also involved in sexually abusing children." *Organised Criminal Paedophile Activity: A Report by the Parliamentary Joint Committee on the National Crime Authority*, Parliament of the Commonwealth of Australia 36 (Nov. 1995) [hereinafter Australian Parliament Report]. This view is not universally accepted, even in Australia. *Id.* It is well documented that paedophiles may possess extensive collections of child pornography. However, not all paedophiles who collect or view pornography sexually molest children and not all of those who collect child pornography can be characterised as paedophiles.

What is clear, however, is that law enforcement agents have found that a significant number of arrested child molesters are in possession of child pornography. One detective in the Los Angeles Police Department estimated that of 700 child molesters arrested over 10 years for extra-familial child sex crimes, more than half had child pornography in their possession and about 80% owned either child or adult pornography. From 1986 to 1988, an organisation called Childwatch in England found that of the 27 child molesters convicted, 23% were using their child victims to make pornography and nearly all of the child molesters had child pornography in their possession.

When discussing the relevance of child pornography to the sexual abuse of children, most experts note that it is important not to confuse the question of statistical line (i.e., whether some or many child sex offenders possess child pornography) with the separate issue of causality (i.e., whether possession of child pornography causes people to commit child-sex offenses). While taking pains to acknowledge that there was no evidence of causality, however, a U.S. Senate Subcommittee investigating child pornography came to the conclusion that "[child pornography plays a central role in child molestations by paedophiles, serving to justify their conduct, assist them in seducing their victims and provide a means to blackmail the children they have molested in order to prevent exposure." U.S. Senate Report, *supra* note 7, at 44.

VII. EFFECTS OF PORNOGRAPHY ON CHILDREN

Many have argued that the distribution of obscene adult material is a victimless crime, that no one gets hurt and that what one does privately is his or her own business. In the case of child pornography, however, where a real child is videotaped or photographed, there is always a victim. The distribution of that depiction repeats the victimisation over and over again, long after the original misdeed took place. Likewise, when the face of a child is superimposed on a sexually explicit photo, even though that child never participated in any sexual act, the distribution of the altered image arguably produces a similar effect.

There are two ways in which children can potentially be harmed by child pornography-by being exposed to child pornography or by being filmed themselves. Children who are exposed to pornography are in danger of being desensitised and seduced into believing that pornographic activity is "normal" for children. EFCW Position Statement,

supra note 22, at 3. It can provide a kind of modelling that may adversely affect children's behaviour and result in learning experiences which connect sex to exploitation, force, or violence. James Check, *Teenage Training: The Effects of Pornography on Adolescent Males*, in Laura Lederer and Richard Delgado, eds., *The Price We Pay: The Case Against Racist Speech, Hate Propaganda and Pornography* 89-91 (1995).

The impact on the child victim who is exploited to produce pornography is often serious. Children can experience a myriad of symptoms including physical symptoms and illnesses, emotional withdrawal, anti-social behaviour, mood-swings, depression, fear and anxiety. In a study of children involved in sex rings, all of whom were sexually abused, 54.8% of the children were used in the creation of pornography. In these children, there was a significant relationship between involvement in pornography and a pattern of identification with the exploiter, along with deviant and symptomatic behaviour. Ann Wolbert Burgess, et al., *Response Patterns in Children and Adolescents Exploited Through Sex Rings and Pornography*, *American Journal of Psychiatry* 141:5 (May 1984).

Children who are sexually abused or exploited may be at high risk of becoming perpetrators or abusers themselves. Note that there are those who reject the "cycle of abuse" theory because it is females who are more frequently sexually abused and yet males are responsible for the majority of child sexual abuse in most societies. See Kelly, et al., *supra* note 16, at 25-26. Those who have been photographed may take drastic measures, for example, burning the house where the pictures are located or stealing back the record of their exploitation. The media in some countries often confuses victims with perpetrators by publishing pictures of children who have been sexually exploited and blanking out the faces of offenders. Those exploited children who enjoyed the attention or who were sexually stimulated carry special shame about their participation in pornography. It must be emphasised that whether minors acquiesced to sexual exploitation, profited from it, or enjoyed it, they are always the victims of an unlawful and often destructive act.

VIII. THE REGULATION OF CHILD PORNOGRAPHY

The easy availability of child pornography in the 70's led governments to respond by promulgating legislation that prohibited the production, sale and distribution of child pornography. Most notably, the United States, in 1977, passed strict laws against child pornography with heavy penalties. In 1980, both Denmark and Sweden put child pornography legislation into effect and the Netherlands followed in 1986.

In 1984, the U.S. Department of State made diplomatic visits to the governments of Netherlands, Sweden and Denmark to enlist the assistance of these governments in eliminating child pornography. In the same year, an NBC documentary, *The Silent Shame*, exposed international trade in pornography and was instrumental in pressuring governments to become stricter in their enforcement. U.S. officials specifically credit this documentary with causing an immediate drop in foreign shipments during 1984.

Since the mid-80's, according to law enforcement officials in the U.S. and Canada, there has been a noticeable decline in the number of new children depicted in commercially distributed pornography. Much of the currently circulating material contains images reproduced from publications published in the 70's and early 80's. UK law enforcement officials point out, however, that the mid-80's also marked the advent of the camcorder and a proportionate increase in the production of non-commercial amateur pornographic home videos involving new children. However, commercial material recently seized in the United States contained images of new prepubescent children from Mexico and Brazil. Some new commercial pornography material also involves underage teens. A U.S. television programme, *Hard Copy*, televised a report in February 1996 on underage girls from the U.S. and Europe who are being photographed in Holland by a company that produces the erotic *Seventeen* magazine. The girls, according to a pediatric specialist applying the *Tanner* scale, The *Tanner* scale is a scale for identifying the stages of development in pubescent children. ranged in age from 13 to 18.

Commercial production, while diminished, does however continue to exist and, as stated previously, is on the rise in Japan. Furthermore, the production of amateur child pornographic home videos is becoming increasingly popular--even in the commercial market. A review of child pornography legislation promulgated by different countries around the globe reveals something of a trend towards an increasing commitment to the protection of children from pornographic exploitation.

1. Laws Regulating the Production, Distribution and Possession of Child Pornography

The UNCRC provides a baseline international legal standard for the protection of children from sexual exploitation. Article 34, among other articles which prohibit the degrading treatment of children, explicitly requires countries to take "all appropriate national, bilateral, and multilateral measures to prevent ... the inducement or coercion of a child to engage in any unlawful sexual activity... [and] the exploitative use of children in pornographic performances and materials." The United Nations Commission on Human Rights' *Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography* reinforces the UNCRC and international efforts to sanction those who exploit children for pornographic purposes.

1.1. Asia and the Pacific Rim

Article 175 of the Japanese Penal Code forbids the printed portrayal of adult genitals, intercourse and pubic hair. However, such representation of children's genitalia is not stringently regulated. Furthermore, Japanese commercial producers have created ingenious ways to avoid prosecution or law enforcement intervention by creating sexually explicit materials which just barely avoid depiction of forbidden body parts. Jack Seward, ed., *Japanese Eroticism* 6 (1993); Constantine, *supra* note 11, at 160-61.

Several other Asian nations have recently adopted child pornography laws. In 1995, Taiwan passed a law criminalising the production of paintings, video tapes, photographs, CD-ROMs, "electronic signals" and other products depicting indecent conduct or sexual interaction involving persons under 18 years of age. The 1993 child protection law passed in the Philippines (Republic Act No. 7610) includes a provision which prohibits the employment or coercion of children under 18 years of age to perform in obscene exhibitions or indecent shows, whether live or video, or to model in obscene publication or pornographic materials. It also imposes sanctions on the sale or distribution of such materials.

Sri Lanka (Penal Code Sec. 286A) passed similar legislation in 1995 which protects children up to 18 years of age. In Cambodia, a draft proposal (Law on the Abolition of Child Trafficking and Prostitution, Art. 9 A I, ii, iii) for a law against child exploitation includes a provision which prohibits the production, possession, importation, exportation or advertisement of drawings, paintings, writings, photographs, or films which depict persons under 18 years of age in an indecent, obscene, or derogatory manner. The draft law also contains a confiscatory provision (Art. 9B).

In Australia, all States and Territories except New South Wales, have promulgated legislation which makes the mere possession of child pornography illegal. Legislation already existed which makes possession for the purposes of distribution, sale, or exhibition against the law. In 1995, the Australian Customs Service initiated a national intelligence project named *Amigo* enlisting the public in efforts to establish the nature and content of child pornography being trafficked in and out of Australia. Australian Parliament Report, *supra* note 24, at 2-3, 38.

1.2. Europe

Legal measures designed to deal with pornography vary considerably among European countries with no common approach to production, distribution, or possession of pornographic material. In England and Wales, the law makes it a criminal offense to take, distribute, exhibit or possess even one "indecent" photograph of a child (Protection of Children Act 1978). The law defines a child as a person under 16. The determination of "indecent" is a matter for the court. In the Netherlands, the manufacture, dissemination, transport and export of pornography involving children under 16 is illegal (Criminal Code, Art. 240b, Sec. 1). In April 1995, the Code was amended to include stiffer sentences and to include sanctions for the mere possession of child pornography. Norway's penal code was amended in 1992. The section on child pornography applies directly to the introduction and possession of child pornography but not to the production of such. Ellen Hamremoen, National Bureau of Crime Investigation (Nor.), *Contribution to Operational Case Feed-back* 3 (Nov. 1993). In order to prosecute for production of child pornography, Norwegian prosecutors resort to other sections of the penal code relating to inducing minors to sexual behaviour and contributing to acts of indecency. Id.

Section 207a of the Austrian Penal Code, passed in July 1994, imposes criminal sanctions for both commercial and amateur production and distribution of child pornography as well as for possession and/or acquisition of the same. Germany also recently made possession of child pornography an offense under the German Penal Code. France's Penal Code (Penal Code Art. 227-23) forbids fixing, recording, or transmitting the pornographic image of a minor and the distribution of that image. None of the Eastern European countries, with the exception of Estonia (Penal Code Art. 200/3), however, have laws specifically directed at child pornography.

Many European countries have very rigid mail secrecy laws and mail can be interfered with only under extraordinary circumstances. Additionally, European postal authorities do not possess the police powers of U.S. postal inspectors. Some countries have very strict penalties against sexual intercourse with a child, but very light sentences or fines for child pornography. Furthermore, "sting" operations which are routine in the United States are not practiced in Europe.

1.3. North America

The U.S. is widely considered to be a major consumer of child pornography but it has also been among the most aggressive in dealing with perpetrators through the passage and enforcement of strict child pornography laws. These laws (18 U.S.C. 2251, 2251A, 2252, 2256) currently prohibit the production, receipt, distribution, possession, transportation, mailing and advertising of any "visual depiction" involving the use of a child under 18 years of age in sexually explicit conduct. Sexually explicit conduct includes sexual acts as well as the "lascivious exhibition of the genitals or pubic area of any person." A more recent law (18 U.S.C. 2258) makes it a felony for any person outside U.S. territory to produce or traffic in child pornography with the intent that the materials be imported into the United States--an extraterritorial application of U.S. law to non-U.S. citizens.

Canada has a very comprehensive child pornography law. Section 163 of the Penal Code makes it a crime to import, produce, print, or publish any child pornography which includes representations of children under 18 who are engaged in or who are depicted as engaged in explicit sexual activity. Furthermore, mere possession of child pornography is also now prohibited in Canada.

2. Regulation of Computer Pornography

Since the advent of computer manipulated child pornography, several countries have passed legislation supporting an expanded definition of child pornography which includes "simulated" child pornography (where the person depicted is considered an adult by law but

is obviously portraying a child) or "pseudo" child pornography which can be computer manipulated or computer generated pornography. In the United Kingdom, the law explicitly prohibits "pseudo-photographs" which definition includes "data stored on a computer disc or by other electronic means which is capable of conversion into a photograph". (Criminal Justice and Public Order Act 1994 Sec. 7(8)(9)). In Austria, the law prohibits not only real child pornography, but also material that suggests to an objective spectator that its production involved the sexual abuse of a child/minor. Similar statutes in the Netherlands (Penal Code Sec. 240b) and in Canada (Penal Code Sec. 163) could be applied to computer generated pornography. In the United States, however, the current federal child pornography statutes and most state statutes apply only to depictions of actual children and not "pseudo" or computer generated pornography. The state of Virginia, however, has passed a statute which criminalises simulated child pornography in which "a person who is depicted as or presents the appearance of being less than eighteen years of age in sexually explicit visual material is *prima facie* presumed to be less than eighteen years of age." (Code of Virginia 18.2-374.1). The same statute includes computer generated reproductions. However, such "pseudo" child pornography may be prosecuted pursuant to federal obscenity statutes. INTERPOL, in their October 1996 General Assembly, plans to adopt a resolution that will recommend all countries enact legislation that criminalises child pornography and that such legislation should include "future forms of support such as computers and other virtual representations."

Other countries have taken steps to regulate the transmission of sexually explicit material on the Internet. Recently, a Munich prosecutor in Germany demanded that CompuServe block access to sexually explicit news groups on the Internet from its on-line service. The government of Singapore has taken dramatic steps to regulate the Internet by demanding that all Internet servers be licensed by the government Singapore Broadcasting Authority. *Singapore Sweeps Internet Clean*, Asia Times (Mar. 8, 1996). This allows them to regulate not only pornography but all politically sensitive material. Chinese officials have warned against Internet pornography and have recently visited Singapore to study their system of regulation.

In the United States, the Telecommunications Act of 1996, signed into law in February 1996, makes it a felony to knowingly transmit "obscene or indecent material" over the Internet or on-line computer services if the material may be seen by children under 18. Immediately after the signing, civil liberty and free speech groups successfully sought a temporary restraining order to block its enforcement. In Australia, three States have introduced bills to censor material on the Internet. Because of the proliferation of inconsistent State and Territory laws, the Standing Committee of Attorneys General has agreed on the preparation of a draft bill suitable for a national scheme. The passage of such legislation in many countries is controversial because it directly challenges the right to freedom of expression which is highly valued, particularly by the computer on-line community.

3. Legal Issues Raised by the Regulation of Computer Child Pornography

Along with all the truly remarkable-even lifesaving-tasks which computers perform, the development of computers and the advent of on-line communication has introduced serious challenges into every area of the law. Many questions have yet to be answered. For example, in each nation across the globe, who is legally liable for material placed on a bulletin board system, an on-line service or on the Internet? The individual who introduces the material into the system, the systems operator, the producer of the material, and/or the person who downloads it? There are further questions. In the case of pornography transmitted by computer, the origination of the image may be in a jurisdiction in one part of the world where the image is legal but it may travel to another where the image is patently illegal. Should the global network be dominated by the strictest standard or the most tolerant? Furthermore, should not consenting adults be able to engage in e-mail interactive

chat sessions which describe "objectionable" materials since these same communications might not be criminalised if they were face to face, by regular post, or by telephone?

The possibility of creating computer generated pornography has produced a myriad of additional legal issues that are difficult to resolve. Civil libertarians argue that if computer generated pornography involves no real child victim, laws based on protecting children would no longer apply and regulation would be an unwarranted restriction of free speech. They argue that because there is no absolute scientific data that demonstrates a causal connection between the use of child pornography and the commission of crimes against children, there is no reason to restrict its transmission on the Internet. They might also point out the difficulty of determining the "age" of a "child" depicted in a computer generated image.

Child advocates voice the position that the harm of child pornography extends far beyond the individual victim. They assert that children as a whole are the victims of computer generated pornography which displays child victims as sexual objects. Many law enforcement officers argue that the harm reaches beyond the individual child when pornography is used to seduce other children. They add that neglecting to prohibit computer generated child pornography could well re-establish the commercial trade--filling bookstores with computer generated images, de-sensitising society and fuelling demand for such material. Additionally, if it becomes impossible to distinguish computer generated pornography from that which depicts an actual child, prosecution of "genuine" child pornography would become virtually impossible and child pornographers would be furnished with another avenue of defence.

IX. CONCLUSION

Child pornography is a real and pressing problem that exists on local, national and international levels. Directing educational campaigns and training towards parents, teachers, students, legislators, civil servants, child welfare agencies, the private sector and law enforcement personnel on a national level is an important step towards the solution. These local efforts must be supported by global cooperation of an enormous magnitude.

International exchange of information and training is vital. The INTERPOL Standing Working Party on Offences Against Minors, initiated in 1992, is a good example of the kind of collaboration which is necessary. Currently, the Standing Working Party includes law enforcement officials from 29 different countries who are actively collaborating in their efforts to prevent the sexual exploitation of children. "Operation Starburst," the first major international operation against individuals using the Internet to trade child pornography, is a further illustration of international cooperation. In 1995, this worldwide police operation resulted in the arrest of 15 offenders in Britain and a number of others in Hong Kong, Germany, South Africa, Singapore, Canada and the United States. *Internet Is Spreading Child Porn*, Glasgow Herald, Nov. 21, 1995 at 7.

Many members of the international community have not yet adopted legislation which is directed specifically at child pornography despite a global trend towards regulation. All nations and international bodies, including funding agencies, must use their influence to encourage the promulgation of legislation that prohibits the production, exhibition, distribution and possession of child pornography. In the 1980's, tough enforcement of child pornography laws in the United States and Northern Europe led to a conspicuous drop in the international distribution of child pornography. Further progress can be made worldwide.

When crafting national or local legislation, a delicate balance needs to be reached between a legitimate concern for the protection of freedom of expression and the equally legitimate and pressing concern for the protection of society's children. Regulation of child pornography should not be used as an excuse to regulate free speech or information flow but rather regulation must be targeted at preventing the sexual exploitation of children who

are among the most vulnerable members of society. Lawmakers should be careful to draft and adopt laws which attract the broadest possible popular backing so that law enforcement agents will be supported in their efforts to enforce the law.

Regulation of child pornography in the computer age presents special challenges that require considerable technical expertise. Law enforcement officials around the world require technical training. Governments must be willing to allocate funds for such training and the necessary equipment. The establishment of an international resource organisation which would employ a team of specialists in the areas of investigation, law enforcement, behavioural science, prosecution, law and computer technology could be an invaluable resource for the global community.

Finally, the protection of children must become a global priority and nations must commit their resources accordingly. This protection includes a firm commitment to the detection and prevention of sex crimes against children and to the treatment of children who have been sexually exploited. The World Congress has been called in order to promote such a goal and should provide a forum where countries affirm the norms for protection of children set forth in the United Nations Convention on the Rights of the Child.

ADDITIONAL SOURCES

Ralph W. Bennett & Daryl F. Gates, *The Relationship Between Pornography and Extra-familial Child Sexual Abuse*, THE POLICE CHIEF 58:2 (Feb. 1991).

Steve Best, *Child Sexual Exploitation: The Customs Enforcement Role*, New Zealand Customs Service (1995).

Ann Wolbert Burgess, *Child Pornography and Sex Rings* (1984).

Daniel S. Campagna and Donald L. Poffenberger, *The Sexual Trafficking in Children: An Investigation of the Child Sex Trade* (1988).

Sheila Davey, *Children and Pornography: A Survey of the Protection of Minors Against Pornography*, (International Catholic Child Bureau) (July 1988).

Howard A. Davidson & Gregory A. Loken, *Child Pornography and Prostitution: Background and Legal Analysis* (1987).

Final Report of the attorney General's Commission on Child Pornography (U.S.) (1986).

J. Robert Flores, et al.. (Symposium), *First Amendment and the Media: Regulating Interactive Communications on the Information Superhighway*, 5 Fordham Intellectual Property, Media & Entertainment Law Journal 294 (1995).

Graham Greenleaf, *Law in Cyberspace*, 70 Australian Law Journal 33 (Jan. 1996).

A. Nicholas Groth, *Men Who Rape: The Psychology of the Offender* (1979).

Her Majesty the Queen v. Paintings, Drawings and Photographic Slides of Paintings, Court File U219/94 (Canada) (1994).

Kenneth V. Lanning & Ann Wolbert Burgess, *Child Pornography and Sex Rings*, FBI Law Enforcement Bulletin, 53:1 (1984).

Alfred O. Olsen, *Investigations of Criminal Activity on Computer Bulletin Boards*, Warwick Township Police Department, (U.S.) (1992).

Mimi Halper Silbert, *The Effects on Juveniles of Being Used for Pornography and Prostitution* 215 in Dolf Zillmann & Jennings Bryant (eds.), *Pornography: Research Advances and Policy Considerations* (1989).

R.P. (Toby) Tyler, *The International Exploitation of Children: Child Pornography*, Surete, Feb. 1985.

PANEL OF EXPERTS

Georgiann G. Cerese, Trial Attorney, U.S. Department of Justice

Shane Davie, Attaché, Australian Customs Service

J. Robert Flores, Senior Trial Attorney, U.S. Department of Justice

Romi Gyergyak, Second Secretary (Police Liaison), Australian Federal Police

Doris A. Hepler, Special Agent, Federal Bureau of Investigation (FBI)

Syed Arshad Husain, MD., F.A.P.A., World Federation for Mental Health

Donald Huycke, Program Manager and Senior Special Agent, U.S. Customs Service

Kevin Ives, Detective Chief Inspector, Paedophilia Unit, New Scotland Yard

Barry Jay, PhD, World Federation for Mental Health

Deen Kaplan, Vice President of Public Policy, National Coalition for the Protection of Children and Families

Richard E. Laczynski, Special Agent, INTERPOL

Kenneth V. Lanning, Supervisory Special Agent, FBI Academy

Stephan P. Lear, Postal Inspector, U.S. Postal Inspection Service

Laura J. Lederer, Centre on Speech, Equality and Harm, University of Minnesota

Marsha Liss, Trial Attorney, U.S. Department of Justice

Alfred O. Olsen, Chief of Police, Warwick Township Police Department

Thomas F. Polhemus, Detective, Fairfax County Police Department

James Reynolds, Detective Chief Inspector, Paedophilia Unit, New Scotland Yard

Ruben D. Rodriguez, Senior Analyst, National Centre for Missing and Exploited Children

Terry Rudolph, Special Agent, Federal Bureau of Investigation (FBI)

R.P. (Toby) Tyler, Sheriff's Sergeant, San Bernardino County Sheriff's Department

Marilyn Young, Senior Intelligence Officer, Canadian Customs

http://64.78.48.196/eng/Ecpat_inter/projects/monitoring/WC1/child_porn.asp

Caught in the crime Net

R.K. Raghavan¹

How to protect children from on-line pornography and paedophiles misusing cyberspace.

RECENTLY British newspapers prominently carried the picture of a 15-year-old, Darren Freeman, who was reunited with his parents after he was missing from home for five days. There were wild speculations that the boy had been kidnapped by an unknown criminal gang and that there was hardly a chance of his being rescued alive. It ultimately turned out that he had spent the week in the company of two young men - 17 and 21 years - whom he had hardly known before and had met on-line. Darren had been introduced to the ritual of a 'chat room' for just three months and had become a near addict, though his parents claimed that they were monitoring his surfing habits! The outcome of police questioning of the boy is not yet known at the time of writing.

Also comes recently the report of a German police claim that they have smashed a huge international child pornography ring involving several thousands of Internet users spread over 166 countries. They have been able to identify three child victims who had figured in pornographic images circulated on cyberspace all over the world. The raid by the German police yielded 745 computers, besides a mind-boggling number of CDs, floppy discs and video-cassettes. While seven persons were arrested in the United Kingdom alone, more than 500 were being questioned by the Germans. Perhaps, the most shocking piece of information was that one of the obscene images seized was that of a four-month-old child. Can anything be more sickening?

The Metropolitan Police in London is more than alive to the menace. 'Operation Ore' is the name for one of the largest drives launched by them against child pornography, following a tip-off from a massive inquiry into the activities of paedophiles that began in Texas four years ago. The National Criminal Intelligence Service (NCIS) had received names of more than 7,000 subscribers to the pornographic sites. But the verification process has been painfully slow. However, till January this year, the offensive has produced more than 1,300 arrests. Those held included judges, teachers, doctors, care workers and soldiers. More startling was the arrest of about 50 police officers. Ironically, two policemen who were associated with last year's investigation of the sensational murder of two young girls in Soham - Jessica Chapman and Holly Wells - were among those charged with child pornography. This itself would indicate the insidious nature of the crime that has spread its tentacles far and wide.

There is absolutely no doubt that crime over the Net is becoming more and more rampant. With the international market soaring and profits rising, we can safely predict that the police would have to deal with gangs from countries that had not been in their reckoning earlier. One can also expect these gangs to be more daring and insensitive to the normal law-abiding citizen who wants to live a life as removed as possible from the underworld. The internationalisation of crime and the space and anonymity provided by the Internet may not permit the luxury of a citizen remaining immune to the goings-on in the cyberspace. What should bother us is not mere pornography on the Net, but the use of children for pepping up such an obnoxious trade. There is a new urgency to protect children. But policemen all over the world - especially those in Europe and the United States - who are weighed down already by the growing complexity of their charter, are confounded by the intricacies thrown up by assaults perpetrated through the cyberspace.

While for every computer crime reported several go unnoticed, it is believed that developing countries are not distant from being affected by the scourge. In the days to

¹Dr R K Raghavan retired as director of the Central Bureau of Investigation. He wrote this article in Frontline magazine: Volume 20-Issue 21, October 11-24 2003

come, computerisation may, far from being a blessing, actually be regarded as a curse because of the enlarging influence of porn on the Net and its easy marketability. If the attitude of resignation that is slowly creeping upon parents that they are helpless in controlling their children's access to obscenity as also to total strangers via the Internet is any indication, governments and law-enforcement agencies will have their tasks cut out for them.

The antidote will have to be not merely more imaginative enforcement strategies, but one that takes care also of the psyche of parents and their young ones. It has to be admitted that the ease with which children can be lured into undesirable relations with total strangers and the anonymity that cyberspace provides to depredators were totally overlooked till a few years ago. Ironically, the concept of 'chat rooms' evoked so much euphoria initially that few ever visualised that it could soon prove to be a menace to the health and safety of young children. This development has been to the dismay of parents who were only the other day boasting of how computer savvy their young ones had become! Microsoft's decision to close down its popular free chat room service in many countries is welcome, although it cannot have much of an impact if other Internet Service Providers who now levy a fee, do not also follow suit.

Like the war against terrorism, the strategy against pornography on the Net has to be twofold. First, tighten up the law, a course that may yield only modest dividends against a determined and depraved intruder who is either out to satisfy his corrupt mind or make big money. Second, give more teeth to the enforcement machinery and make it focussed. This is much more sensible than merely making the law harsher. In the confrontation with a seasoned paedophile, there is a third strategy that is available and is easier to implement. This is one of educating parents on ways in which they could protect their wards. We are bound to succeed here because emotions are involved, and seldom do you come across a parent who is unwilling to cooperate, however much he is unlettered, on issues that concern his or her children. More of this later.

The U.S. has perhaps been the most aggressive in the area of legislation against obscenity directed at children. The U.S. Congress passed a Sexual Exploitation of Children Act as early as 1977, and followed it up with the Child Protection Act, 1984 and the Child Sexual Abuse and Pornography Act, 1988. What, however, triggered national attention and determination was the sudden and inexplicable disappearance in 1993 of a juvenile from his home in Maryland. This led to a major investigation and the arrest of two suspects who, it was found, were carrying on with child sexual exploitation unchecked for nearly 25 years. Enquiries revealed their free use of computers to transmit explicit images of children across the globe. Congress moved in to adopt the Child Pornography Prevention Act of 1996. The focus of this legislation was to empower the police even in cases where adults were "morphed" to look like children.

In the U.K., both the Protection of Children Act, 1978 and the Criminal Justice Act, 1988 deal extensively with child pornography. According to the former, an 'indecent photograph' of a child would include "data stored on a computer disc or by other electronic means which is capable of conversion into a photograph". Under the 1988 Act, it is an offence for a person "to have any indecent photograph of a child (below 18 years) in his possession" unless he has a valid explanation, such as lack of knowledge or delivery of the photograph to him unsolicited, and can also prove that he had not kept it with him for an unreasonable length of time. The Tony Blair government's sensitivity is revealed by the elaborate Sexual Offences Bill, 2003 that is pending in Parliament. Sections 50, 51 and 52 deal with child pornography and make the causing, inciting, controlling or facilitating of child prostitution or pornography punishable under law.

WE in India have possibly underestimated the pernicious impact of pornography, especially that which is circulated over the Net and which uninhibitedly exploits images of children. We still rely heavily on Sections 292 and 293 of the Indian Penal Code, 1860. The former deals with the sale of obscene objects (books, pamphlets, writing, drawing, and so

on.) generally, and the latter, to persons under the age of 20. Section 67 of the Information Technology Act, 2000 deals with publishing of obscene information in the electronic form. It prescribes a penalty of imprisonment for five years and a fine of Rs.100,000 for a first time conviction. Subsequent convictions will entail 10 years and Rs.200,000 respectively. It is a matter for debate whether we need to enhance the punishments prescribed, to make them more deterrent. In the alternative, do we need a specific law that addresses the problem of child pornography on the Net or elsewhere, akin to what the U.S. has done? In any case, Parliament needs to be persuaded by public interest groups to show greater sensitivity to an issue that is bound to assume enormous proportions as more households acquire computer systems.

Law enforcement agencies in many countries in the West have been weighed down by the volume of crime on the Net that is reported to them. Although they give top priority to offences against children, the huge numbers unearthed by the police have resulted in many paedophiles escaping follow-up action. Another difficulty encountered is the enormous pressure brought on them by social groups that believe in reformation rather than punishment of offenders.

Perhaps, of all agencies, it is the Federal Bureau of Investigation that has a system in place to tackle pornography. It considers child pornography via the Internet as the most significant of all cyber crimes, and has a cyber tip-off line that has brought in abundant information from citizens. The FBI's focus is on large-scale producers and distributors of obscene material. Attention has also been paid to identifying persons who travel frequently across states to indulge in sexual activity with children. A useful exercise has been the Innocent Images National Initiative (IINI) that galvanises several agencies together on to a single platform that relies mostly on intelligence and technology. London's Metropolitan Police has also been active on this front. Indian agencies, especially the Central Bureau of Investigation and State CIDs (Criminal Investigation Departments), may have to pool their resources and put up a joint front. Any complacency and inaction will only encourage paedophiles. I am sure we have many of them in our country who need to be identified and reformed if not punished.

There is a definite case for private initiatives to combat the evil. A good example is the Internet Watch Foundation (IWF) of the U.K. established in 1996 mainly to tackle the problem of illegal material on the Net. As an independent organisation, it has done significant work to implement proposals that emanate from government, the police and ISPs in the country. I am not sure that we have anything of the kind.

In the final analysis, all governmental efforts are bound to fail if schools and parents do not contribute their own, by exercising greater influence over their children. While schools may impart basic instruction on how not to abuse computer facilities, at home parents need to display vigilance over surfing habits of children. One suggestion has been that a home computer is installed in a common room easily accessible to everyone in the family, rather than in a child's bedroom. Also, children should be strictly instructed not to cultivate strangers over the chat room nor give them their identity particulars such as name, address and telephone numbers. Any child receiving frequent telephone calls from an individual whom he or she has met only on-line or gifts from such a person will have to be clearly told to desist from responding. He or she should be advised to firmly reject suggestions of face-to-face meetings. Also to be prohibited is a child uploading his or her photograph on to the Net. These are basic safety tips that could avert mishaps. I will be most delighted to hear from readers if they have found these suggestions, endorsed by many law enforcement agencies, useful.

I will be happier if they report that they have passed them on to many others who may not have access to my column. For, ultimately it is the dissemination of such critical information that can strengthen the hands of investigating agencies, which are otherwise fighting a near hopeless situation of spiralling crime.

Tourism and Trafficking

Introduction¹

Tourism today contributes around 11.6 per cent of India's GDP and employs approximately 9.4 per cent of Indian labour. About 2.4 million tourists arrive in India every year, comprising 0.4 per cent of the world's total tourist traffic (fiscal year 2000). According to one estimate, 40 million tourists, constituting 4 per cent of the world's tourism traffic, are expected to visit India by 2020. A study conducted by the Centre for Monitoring the Indian Economy (CMIE) shows that the number of tourists arriving in India rose from 20,26,743 in 1999-2000 to 21,52,848 tourists during 2000-2001. Foreign exchange earnings from inbound tourists in the same period grew from \$ 2,443 million to \$ 2,717 million (Equations 2002). Tourism has had both positive and negative impacts on Indian society. Tourism promotes development, brings in foreign exchange and facilitates cultural interaction and integration. But, at the same time it also provides anonymity and opportunities for various illegal activities. Of late, aggressive promotion has placed a greater emphasis on tourism's leisure and recreational aspects. This has also, unfortunately, provided many tourists with opportunities to gratify their deviant sexual proclivities. When in a foreign land, the cloak of anonymity relieves the tourists of the social and legal constraints of their own country. The anonymity enjoyed by tourists, their craving for pleasure and excitement and the poverty and unemployment of the local people contribute to the growth of CSE in areas frequented by tourists. It must be mentioned that while not all tourists are sex tourists, some of them definitely are:

Child Sex Tourism

In India, the abuse of both male and female children by tourists has acquired serious dimensions. Unlike Sri Lanka and Thailand, this problem has not been seriously tackled or discussed openly and has remained more or less shrouded in secrecy, making the likelihood of child abusers being caught and punished very low. The silence of the community and its unwillingness to speak out and openly discuss the issue has further compounded the problem.

Paedophilia

Sex tourists are often paedophiles who seek out children to satisfy their sexual urges. They can be of any nationality and come from varied professional backgrounds. Though some of them are loners, paedophiles are usually members of highly organised networks (Desai, 2001). They are also very cautious in their operations and many of them make frequent changes of accommodation and communicate through coded messages. One view is that paedophiles are pathological cases in need of treatment. 'Thus we become absorbed', says R.J. McLachlan (Lanning, 2001) 'with their psychological makeup and neglect what should be our overriding concern, namely their behaviour and action. It is their behaviour and action that destroy children's lives and it is these that should be the focus of law enforcement'.

Victims of paedophilia often have ambivalent feelings towards their abusers. Paedophiles shower attention on the children in the form of gifts and other presents. Most of the victimised children, being from environments of emotional and material deprivation, are unwilling to make incriminating statements against the paedophiles.

¹Tourism and Trafficking- An Extract from National Human Rights Commission Report, "Trafficking in Women and Children in India" published by Orient Longman Private Limited 2005

Modus Operandi

ARTWAC revealed the modus operandi of paedophiles:

Running an orphanage: This is a typical cover of many paedophiles. In a well known, publicised case in Tamil Nadu, a swami of a religious sect, running an orphanage in a sprawling campus, was found to be a child abuser. A large number of children residing in the orphanage were exploited by the accused over a long period of time. The sordid happenings in the orphanage came to light when the police raided the place on the complaint of an escaped child and arrested the swami.

In another case, Will Heum, a Dutch national posing as a Good Samaritan, set up an orphanage called 'Little Home' in Poonjeri village in the Kanchipuram district of Tamil Nadu. 42 school children (19 girls and 23 boys) in the age group of 10-20 years were housed in the orphanage. Heum used to drug the children and subject them to sexual abuse. His crimes were exposed when one of the children escaped and filed a police complaint. During the investigation it emerged that, in the name of charity, Heum, with his wife's help, had been abusing the inmates of the orphanage for eight years. The total number of abused victims is still unknown. Heum also entertained a large number of foreign tourists at his orphanage and allowed them to sexually abuse the children.

Films and Documentaries: Another paedophile modus operandi is to claim to be producers of films and documentaries. This cover came to light in the case of a Swiss couple arrested by the police in Mumbai. The case study (No. CS-MA-10) prepared by ISS researchers with inputs from WISE, Mumbai, reveals how the couple picked up girls from the streets by tempting them with toys, food and chocolates. A Mumbai NGO, FACSE, learned of the couple's activities and informed the police. When the police raided the hotel room, they found the accused with two minor girl children. In addition the police found sexually explicit paedophilic material on the couple's laptop. The materials indicated that the accused routinely visited other Asian countries as well. The Indian courts convicted the accused persons and ordered compensation to be paid to the victimised children.

Factors Affecting the Growth of Child Sex Tourism

Some of the factors responsible for the growing phenomenon of child sex tourism are:

- the feeling among foreign tourists that the chances of detection are slender in the third world,
- the belief that children are less likely to have contracted STDs, making sex with them safe,
- the mistaken notion that sex with virgin girls cures HIV, and
- the idea that governments of many developing countries turn a blind eye to this problem with a view to encouraging tourism.

Child Pornography

Child pornography and sex tourism are closely linked. Indeed, the crimes are mutually reinforcing. Sex tourists have been in the forefront of the production of pornographic materials in the form of pictures and films depicting nude children and sex with children. They are also involved in trafficking pornographic materials and this work has become easier with the advent of internet technology. Hardened child sexual exploiters are often found to be producing, collecting and circulating child pornography. A child sexual exploiter typically captures images of his children and then circulates them. In a raid in Stockholm, Sweden in 1996, Swedish police discovered pornographic films on the beach boys of Sri Lanka. The footage ran for over 300 hours (Patkar & Patkar 2002). 'Aggressive paedophiles,' writes FBI expert Kenneth Lanning (2001), 'almost always collect child pornography. They may be outwardly respectable but they will have a disputed home or work background. Experienced offenders are adept at identifying vulnerable children from a broken or disputed home background'.

Goa

In India, Goa, a small state on India's western coast has become a sex destination for many visiting tourists. In a research paper prepared for ECPAT, an international voluntary agency against child prostitution in India, Davidson O'Connell and Taylor Sanchez (1996), stated that, 'A small number of men who might be described as hardened sex tourists have identified Goa as a site in which they can cheaply accommodate their sexual interests'.

Sex tourism in Goa became known all over the country after the infamous case of Freddy Peats. Peats had been operating in Goa since 1980 without arousing suspicion. He was considered to be a respectable man, a good Samaritan, who provided shelter to young homeless boys and girls. He was actually involved in luring young children into prostitution and subjecting them to sexual exploitation. The discovery of nearly 2,300 photographs of nude children, some of them engaging in sex, in some cases with Peats, illustrated the depths of his depravity. Investigation of the case by the CBI also brought to light the involvement of other offenders from Australia, Sweden, Thailand, France and Germany. In this case, the CBI took over the investigation of the case on the orders of the High Court, following the writ petition filed by a social activist, Sheila Barse. The investigation revealed that a number of foreign tourists used to visit Freddy Peats' orphanage and take the boys out. Sometimes the boys were taken to different hotels and sexually abused over a period of time.

Peats was convicted and sentenced to long term imprisonment, but some others involved in the case managed to escape. The modus operandi of Freddy Peats (case study No. CS-GA-8) was varied, devious and ingenious. Children were kept under control not simply by coercion but by deceit. They were brainwashed to accept sexual activities as natural. One of the victims stated during the investigation that he was taken to Germany and kept there for six months. Paedophiles often gained the children's silence by portraying the abuse as education or as a game or with threats and violence, thus forcing them to not disclose their 'special secret'.

Sources: Children are procured for sex abuse from the following sources:

- hutments on the beach,
- children of migrant labourers left unattended by their families, and
- children brought to Goa by foreign tourists from other states.

The intermediaries facilitating this procurement are beach boys, shack owners and former victims of paedophiles.

Goa Children's Act 2003: One stumbling block in the prosecution of paedophiles has been the absence of laws in India dealing comprehensively with the problem of paedophilia. The Goa Children's Act of 2003, a landmark legislation, finally addressed several issues of children's exploitation in an integrated manner. The salient features of the Act are outlined in Section 2, case study No. CS-GA-9.

The Goa children's Act provides for the setting up of victim assistance units to help children in trauma and recommends the setting up of children's courts to try all offences against children. The mandatory sensitisation of law enforcement personnel (S 27) is a bold step prescribed by the law. Though the Act attempts to allocate the responsibility for children's protection and the prevention of their abuse to several sections of society, much will hinge on the manner in which the Act is enforced.

Kerala

Sex tourism has also become a problem in Kerala, which has witnessed a tourist boom from the early 1980s. But, along with the growth of tourism, there has been the increasing victimisation of children. DARSHAN, an NGO group, conducted a research study of the problems of sex tourism in Kerala. The study mentions that the Kerala Women's Commission received numerous complaints from women tourists about sex tourism in Kovalam. The commission even rescued 11 girls belonging to the Lambada community of Karnataka from Kovalam in October 1998 (Manoj and Thomas, 2002-2003). Some brothels also arranged package tours to tourist destinations for their customers. The DARSHAN research paper contains case studies documenting the exploitation of trafficked girls. In one case, a girl was deceived by the promise of a job and forced into CSE. She even had to accompany local tourists to various places like Ooty and Nelliampathy. DARSHAN's study also reveals how hoteliers in areas like Qullion, Alleppy and Ernakulam promote sex tourism because such services bring in extra income. Victims are often projected by agents as college girls in search of fun and excitement or wanting to earn an extra buck. In places like Alleppy, foreign tourists stay in houseboats, making houseboat sex tourism a new and thriving concept. This is a safe method, as there are hardly raids on houseboats (Patkar and Patkar 2002). In Keia\la, though places like Kovalam and Fort Cochin have become sex tourism hot spots, police records indicate that enforcement agencies have turned a blind eye to this problem and cases have seldom been registered under the 1TPA..

Mumbai

With the accent on tourism promotion, bars and pubs have proliferated in different tourist destinations. A study of trafficked bar girls around Mumbai conducted by two NGO groups Save our Sisters (SOS) and VEDH reveals a very disturbing picture. There are about 2,000 bars in Greater Mumbai, where a large number of girls work, averaging about 50 girls per bar. Thus, there are now approximately 1,00,000 bar girls in Greater Mumbai alone. Most of the bar girls come from Bangladesh, Nepal and other cities in India. The 'push' factors are mainly economic, such as sale of family land, debt, expenditure on marriages and lack of any other skills. A number of girls who were interviewed said natural disasters like flood and drought forced them to leave their homes. In several cases, male family members made the decision to send the girls to Mumbai and they usually had no choice. Around 75 per cent of the bar girls were under 25 years of age.

Bar girls face physical, social and sexual abuse. The girls are paid on an hourly basis and in bars, older girls train new recruits in the manners, etiquette and dance required of them. If the girls are virgins, then, within a few weeks of their arrival, they are introduced to 'special clients' who include VIPs, local politicians and government officials. Many of the interviewed girls said that they had to go out with clients and submit to their sexual demands. Although many of the girls initially joined the bars to work as dancers or waitresses, a good many of them became CSE victims.

Eastern Coast

A study titled 'Tourism related commercial sexual exploitation of children in the Eastern coast of India' conducted by a NGO, Equations, in the year 2002, revealed that most of the children they interviewed were trafficked from places in and around specific tourist spots. In the case of Mamallapuram in Tamil Nadu, the children were from Perambur, Saidapet and other nearby places. It was found that many of these children were mobile, accompanying tourists on their visits to nearby states. For instance, children from Puri, a tourist destination in Orissa were often taken to Hyderabad by visitors. The study showed that a majority of the children were from broken homes or families affected by poverty and debt bondage. Most of them were between the ages of 8 and 18 and had little or no education. They were procured by people, who were known to them or trusted by their families. It was found that many victimised children in both Puri and in Digha (West Bengal) were from

fishing families. Since the family income had fallen drastically because fishing is no longer a viable occupation due to the operation of trawlers, families were compelled to offer their children to visiting tourists for money.

Tourists from West Bengal and other parts of Orissa come to Puri with their families and become friendly with beach boys, trinket sellers and other vendors, subsequently engaging them in sexual relations. Many children, according to the 2002 Equations study, have mentioned that they had sex with a varied range of tourists who paid them Rs 50 to Rs 200. It is hard to measure the incidence of child sex tourism as it is difficult to conduct quantitative research on such a clandestine and illegal industry. Qualitative research and anecdotal evidence suggest that child sex tourism is growing and spreading into different regions of the world. There is also evidence that over the last few years, increasing numbers of sex offenders, particularly from western industrialised countries, are shifting to less developed countries due to increasing vigilance and action against paedophilia in their own countries. There are fewer laws against child abuse in India and the beaches of Goa in the West and Kovalam in Kerala are increasingly becoming the main destinations for those seeking child prostitutes (Desai 2001).

Preventive Measures

The United Nations Declaration on the Rights of the Child (1989) asserts that children will be protected against exploitation and will not be subject to trafficking in any form. Article 34 speaks of bilateral and multilateral measures to prevent the inducement or coercion of a child to engage in any unlawful sexual activity, the exploitative use of children for prostitution, unlawful sexual practices and pornographic purposes.

The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography 2000 (Refer Appendix), contains further provisions to be incorporated into domestic and international laws and multilateral agreements covering the crime of sex tourism.

Various countries and international organisations have taken steps to counter the menace of children's sexual exploitation, child pornography and child sex tourism. In Thailand, such initiatives include the prosecution, blacklisting and license revocation of sex tourism operators. Top hotels require guests to register minor visitors. Similarly, the Brazilian government is fighting sex tourism by asking hotels to discourage the CSE of children on their premises. Hotels participating in such programmes receive an extra star in their quality rating. Brazil also distributes brochures to visiting tourists, making them aware of the penalty for sexually exploiting minors. Countries like France, Germany, Belgium, Netherlands and Italy have introduced luggage tags condemning sex tourism. In the Netherlands, a warning against child sex tourism is included in the travel brochure issued by the Ministry of Foreign Affairs.

There is a need for global co-operation to fight the menace of child sex tourism. This is an internationally organised crime and a global perspective and co-ordinated plan of action are necessary to deal with it. The tourist sending countries need to pass extra-territorial legislation to prosecute nationals who visit other countries to engage in sex with children and women. The destination countries need to enact and enforce stringent laws that punish the exploiters and their collaborators. Child pornography, which is closely associated with child sex tourism is a technically advanced crime. It is therefore necessary to set up trained and equipped police units to combat internet based child pornography. Strong messages against sex tourism can also be displayed at strategic places, citing legal and penal provisions and cautioning possible victims.

Central and state governments should put in place a monitoring mechanism with the co-operation of other stakeholders such as hoteliers, tour operators and local authorities to ensure children's safety. A comprehensive policy for dealing with the problem also needs to be worked out, with provisions for the rehabilitation of victims.

Some useful preventive measures would be:

- Extraterritorial legislation passed by the central government to try any citizen of India who travels within or outside the country with an intention to have sex with children or who engages in sex with children or knowingly enters into commercial arrangements which result in sex with women and children,
- Strong messages against sex tourism displayed at strategic places, publicizing legal and penal provisions and cautioning potential sex tourists, and
- Mandatory reporting by technicians, studio owners and agents who take on film processing works on sexually explicit, pornographic audiovisual materials that come to their notice.

The NHRC, in collaboration with UNIFEM, organised a one-day sensitisation programme on 12 January 2003 on the prevention of sex tourism, to familiarise senior representatives of the hotel and tourism industry with the problem. Some of the recommendations that emerged from the sensitisation programme are:

- regular sensitisation of staff and other functionaries in the hotel and tourism sector, journalists, tour operators, airline operators and other personnel associated with the hotel and tourism industry,
- preparation of guidelines, handbooks and manuals aimed at the prevention of sex tourism and trafficking, and
- distribution of publicity materials to appraise international tourists on the legal repercussions of sex tourism and trafficking.

This section attempts to put together, as a reference, global attempts to understand and implement regulatory and protective measures for securing the rights of the child, particularly in the context of tourism. While the ideals are lofty, the record of these international organizations has been far from satisfactory. A case in point is the intervention of World Tourism Organization which now enjoys the status of a United Nations special agency. The member countries of the UNWTO, (then WTO-OMT) at its 13th General Assembly in Santiago, Chile adopted the Global Code of Ethics for Tourism on 1 October 1999.

According to the Secretary General of WTO, “the Global Code of Ethics for Tourism sets a frame of reference for the responsible and sustainable development of world tourism at the dawn of the new millennium. It draws inspiration from many similar declarations and industry codes that have come before and it adds new thinking that reflects our changing society at the end of the 20th century”. However, the role of the civil society in this process and subsequently has been marginal. This is not surprising given the fact that the structure and processes of international consensus building often undermine the essential principles of democratic debate. The more serious question is how the ratification of the code by member countries have resulted in any mitigation of the exploitative character of tourism industry particularly in sustainable development, equitable tourism, trafficking and child abuse, in the developing world.

Other important conventions have been the ILO conventions 138 (Minimum Age Convention, 1973) and ILO Convention No. 182: (Worst Forms of Child Labour Convention, 1999). Interestingly, India has ratified neither. The United Nation Convention on The Rights Of The Child and the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography 2002 are also important global efforts to reaffirm that children's rights require special protection and call for continuous improvement of the situation of children all over the world, as well as for their development and education in conditions of peace and security. The Code of Conduct for the Protection of Children from Sexual Commercial Exploitation in Travel and Tourism ECPAT 1998, is yet another serious effort by the NGO ECPAT which has taken the leadership to engage governments and industry on the issue of Commercial Sexual Exploitation of children in the context of tourism.

In India, the attempts by EQUATIONS to engage the Ministry of Tourism in its purported plans of developing



Global Conventions and Guidelines to Protect the Rights of the Child in the Context of Tourism

guidelines on responsibility in tourism have been one sided and futile! Ministry top brass are too busy flying to various global travel marts to promote tourism to bother to engage at home in discussions on how tourism can be less exploitative, and how both tourism promotion bodies of the government and private players, can be called to be more accountable for what they do and the Tourism Policies of the National and State to acknowledge the role of tourism in exploiting children, clearly denounce sexual exploitation of children and commit that tourism will be child exploitation free zones.

International Labour Organization (ILO) - Convention Number C138: Minimum Age Convention, 1973¹

Article 1

Each Member for which this Convention is in force undertakes to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons.

Article 2

1. Each Member which ratifies this Convention shall specify, in a declaration appended to its ratification, a minimum age for admission to employment or work within its territory and on means of transport registered in its territory; subject to Articles 4 to 8 of this Convention, no one under that age shall be admitted to employment or work in any occupation.
2. Each Member which has ratified this Convention may subsequently notify the Director-General of the International Labour Office, by further declarations, that it specifies a minimum age higher than that previously specified.
3. The minimum age specified in pursuance of paragraph 1 of this Article shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years.
4. Notwithstanding the provisions of paragraph 3 of this Article, a Member whose economy and educational facilities are insufficiently developed may, after consultation with the organisations of employers and workers concerned, where such exist, initially specify a minimum age of 14 years.
5. Each Member which has specified a minimum age of 14 years in pursuance of the provisions of the preceding paragraph shall include in its reports on the application of this Convention submitted under article 22 of the Constitution of the International Labour Organisation a statement-
 - (a) that its reason for doing so subsists; or
 - (b) that it renounces its right to avail itself of the provisions in question as from a stated date.

¹ Convention concerning Minimum Age for Admission to Employment : Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Fifty-eighth Session on 6 June 1973, and Having decided upon the adoption of certain proposals with regard to minimum age for admission to employment, which is the fourth item on the agenda of the session, and Noting the terms of the Minimum Age (Industry) Convention, 1919, the Minimum Age (Sea) Convention, 1920, the Minimum Age (Agriculture) Convention, 1921, the Minimum Age (Trimmers and Stokers) Convention, 1921, the Minimum Age (Non-Industrial Employment) Convention, 1932, the Minimum Age (Sea) Convention (Revised), 1936, the Minimum Age (Industry) Convention (Revised), 1937, the Minimum Age (Non-Industrial Employment) Convention (Revised), 1937, the Minimum Age (Fishermen) Convention, 1959, and the Minimum Age (Underground Work) Convention, 1965, and Considering that the time has come to establish a general instrument on the subject, which would gradually replace the existing ones applicable to limited economic sectors, with a view to achieving the total abolition of child labour, and Having determined that these proposals shall take the form of an international Convention, adopts this twenty-sixth day of June of the year one thousand nine hundred and seventy-three the following Convention, which may be cited as the Minimum Age Convention, 1973: <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C138>

Article 3

1. The minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons shall not be less than 18 years.
2. The types of employment or work to which paragraph 1 of this Article applies shall be determined by national laws or regulations or by the competent authority, after consultation with the organisations of employers and workers concerned, where such exist.
3. Notwithstanding the provisions of paragraph 1 of this Article, national laws or regulations or the competent authority may, after consultation with the organisations of employers and workers concerned, where such exist, authorise employment or work as from the age of 16 years on condition that the health, safety and morals of the young persons concerned are fully protected and that the young persons have received adequate specific instruction or vocational training in the relevant branch of activity.

Article 4

1. In so far as necessary, the competent authority, after consultation with the organisations of employers and workers concerned, where such exist, may exclude from the application of this Convention limited categories of employment or work in respect of which special and substantial problems of application arise.
2. Each Member which ratifies this Convention shall list in its first report on the application of the Convention submitted under article 22 of the Constitution of the International Labour Organisation any categories which may have been excluded in pursuance of paragraph 1 of this Article, giving the reasons for such exclusion, and shall state in subsequent reports the position of its law and practice in respect of the categories excluded and the extent to which effect has been given or is proposed to be given to the Convention in respect of such categories.
3. Employment or work covered by Article 3 of this Convention shall not be excluded from the application of the Convention in pursuance of this Article.

Article 5

1. A Member whose economy and administrative facilities are insufficiently developed may, after consultation with the organisations of employers and workers concerned, where such exist, initially limit the scope of application of this Convention.
2. Each Member which avails itself of the provisions of paragraph 1 of this Article shall specify, in a declaration appended to its ratification, the branches of economic activity or types of undertakings to which it will apply the provisions of the Convention.
3. The provisions of the Convention shall be applicable as a minimum to the following: mining and quarrying; manufacturing; construction; electricity, gas and water; sanitary services; transport, storage and communication; and plantations and other agricultural undertakings mainly producing for commercial purposes, but excluding family and small-scale holdings producing for local consumption and not regularly employing hired workers.
4. Any Member which has limited the scope of application of this Convention in pursuance of this Article-

- (a) shall indicate in its reports under Article 22 of the Constitution of the International Labour Organisation the general position as regards the employment or work of young persons and children in the branches of activity which are excluded from the scope of application of this Convention and any progress which may have been made towards wider application of the provisions of the Convention;
- (b) may at any time formally extend the scope of application by a declaration addressed to the Director-General of the International Labour Office.

Article 6

This Convention does not apply to work done by children and young persons in schools for general, vocational or technical education or in other training institutions, or to work done by persons at least 14 years of age in undertakings, where such work is carried out in accordance with conditions prescribed by the competent authority, after consultation with the organisations of employers and workers concerned, where such exist, and is an integral part of--

- (a) a course of education or training for which a school or training institution is primarily responsible;
- (b) a programme of training mainly or entirely in an undertaking, which programme has been approved by the competent authority; or
- (c) a programme of guidance or orientation designed to facilitate the choice of an occupation or of a line of training.

Article 7

1. National laws or regulations may permit the employment or work of persons 13 to 15 years of age on light work which is-
 - (a) not likely to be harmful to their health or development; and
 - (b) not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received.
2. National laws or regulations may also permit the employment or work of persons who are at least 15 years of age but have not yet completed their compulsory schooling on work which meets the requirements set forth in sub-paragraphs (a) and (b) of paragraph 1 of this Article.
3. The competent authority shall determine the activities in which employment or work may be permitted under paragraphs 1 and 2 of this Article and shall prescribe the number of hours during which and the conditions in which such employment or work may be undertaken.
4. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, a Member which has availed itself of the provisions of paragraph 4 of Article 2 may, for as long as it continues to do so, substitute the ages 12 and 14 for the ages 13 and 15 in paragraph 1 and the age 14 for the age 15 in paragraph 2 of this Article.

Article 8

1. After consultation with the organisations of employers and workers concerned, where such exist, the competent authority may, by permits granted in individual cases, allow exceptions to the prohibition of employment or work provided for in Article 2 of this Convention, for such purposes as participation in artistic performances.

2. Permits so granted shall limit the number of hours during which and prescribe the conditions in which employment or work is allowed.

Article 9

1. All necessary measures, including the provision of appropriate penalties, shall be taken by the competent authority to ensure the effective enforcement of the provisions of this Convention.
2. National laws or regulations or the competent authority shall define the persons responsible for compliance with the provisions giving effect to the Convention.
3. National laws or regulations or the competent authority shall prescribe the registers or other documents which shall be kept and made available by the employer; such registers or documents shall contain the names and ages or dates of birth, duly certified wherever possible, of persons whom he employs or who work for him and who are less than 18 years of age.

Article 10

1. This Convention revises, on the terms set forth in this Article, the Minimum Age (Industry) Convention, 1919, the Minimum Age (Sea) Convention, 1920, the Minimum Age (Agriculture) Convention, 1921, the Minimum Age (Trimmers and Stokers) Convention, 1921, the Minimum Age (Non-Industrial Employment) Convention, 1932, the Minimum Age (Sea) Convention (Revised), 1936, the Minimum Age (Industry) Convention (Revised), 1937, the Minimum Age (Non-Industrial Employment) Convention (Revised), 1937, the Minimum Age (Fishermen) Convention, 1959, and the Minimum Age (Underground Work) Convention, 1965.
2. The coming into force of this Convention shall not close the Minimum Age (Sea) Convention (Revised), 1936, the Minimum Age (Industry) Convention (Revised), 1937, the Minimum Age (Non-Industrial Employment) Convention (Revised), 1937, the Minimum Age (Fishermen) Convention, 1959, or the Minimum Age (Underground Work) Convention, 1965, to further ratification.
3. The Minimum Age (Industry) Convention, 1919, the Minimum Age (Sea) Convention, 1920, the Minimum Age (Agriculture) Convention, 1921, and the Minimum Age (Trimmers and Stokers) Convention, 1921, shall be closed to further ratification when all the parties thereto have consented to such closing by ratification of this Convention or by a declaration communicated to the Director-General of the International Labour Office.
4. When the obligations of this Convention are accepted-
 - (a) by a Member which is a party to the Minimum Age (Industry) Convention (Revised), 1937, and a minimum age of not less than 15 years is specified in pursuance of Article 2 of this Convention, this shall ipso jure involve the immediate denunciation of that Convention,
 - (b) in respect of non-industrial employment as defined in the Minimum Age (Non-Industrial Employment) Convention, 1932, by a Member which is a party to that Convention, this shall ipso jure involve the immediate denunciation of that Convention,
 - (c) in respect of non-industrial employment as defined in the Minimum Age (Non-Industrial Employment) Convention (Revised), 1937, by a Member which is a party to that Convention, and a minimum age of not less than 15 years is specified in pursuance of Article 2 of this Convention, this shall ipso jure involve the immediate denunciation of that Convention,

- (d) in respect of maritime employment, by a Member which is a party to the Minimum Age (Sea) Convention (Revised), 1936, and a minimum age of not less than 15 years is specified in pursuance of Article 2 of this Convention or the Member specifies that Article 3 of this Convention applies to maritime employment, this shall ipso jure involve the immediate denunciation of that Convention,
 - (e) in respect of employment in maritime fishing, by a Member which is a party to the Minimum Age (Fishermen) Convention, 1959, and a minimum age of not less than 15 years is specified in pursuance of Article 2 of this Convention or the Member specifies that Article 3 of this Convention applies to employment in maritime fishing, this shall ipso jure involve the immediate denunciation of that Convention,
 - (f) by a Member which is a party to the Minimum Age (Underground Work) Convention, 1965, and a minimum age of not less than the age specified in pursuance of that Convention is specified in pursuance of Article 2 of this Convention or the Member specifies that such an age applies to employment underground in mines in virtue of Article 3 of this Convention, this shall ipso jure involve the immediate denunciation of that Convention, if and when this Convention shall have come into force.
5. Acceptance of the obligations of this Convention-
- (a) shall involve the denunciation of the Minimum Age (Industry) Convention, 1919, in accordance with Article 12 thereof,
 - (b) in respect of agriculture shall involve the denunciation of the Minimum Age (Agriculture) Convention, 1921, in accordance with Article 9 thereof,
 - (c) in respect of maritime employment shall involve the denunciation of the Minimum Age (Sea) Convention, 1920, in accordance with Article 10 thereof, and of the Minimum Age (Trimmers and Stokers) Convention, 1921, in accordance with Article 12 thereof,
- if and when this Convention shall have come into force.

Article 11

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 12

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.
2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.
3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratifications has been registered.

Article 13

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.
2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding

paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 14

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.
2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 15

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 16

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 17

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides:
 - a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 13 above, if and when the new revising Convention shall have come into force;
 - b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.
2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

United Nations Convention on the Rights of the Child

The General Assembly¹,

Recalling its previous resolutions, especially resolutions 33/166 of 20 December 1978 and 43/112 of 8 December 1988, and those of the Commission on Human Rights and the Economic and Social Council related to the question of a convention on the rights of the child,

Taking note, in particular, of Commission on Human Rights resolution 1989/57 of 8 March 1989, by which the Commission decided to transmit the draft convention on the rights of the child, through the Economic and Social Council, to the General Assembly, and Economic and Social Council resolution 1989/79 of 24 May 1989,

Reaffirming that children's rights require special protection and call for continuous improvement of the situation of children all over the world, as well as for their development and education in conditions of peace and security,

Profoundly concerned that the situation of children in many parts of the world remains critical as a result of inadequate social conditions, natural disasters, armed conflicts, exploitation, illiteracy, hunger and disability, and convinced that urgent and effective national and international action is called for,

Mindful of the important role of the United Nations Children's Fund and of that of the United Nations in promoting the well-being of children and their development,

Convinced that an international convention on the rights of the child, as a standard-setting accomplishment of the United Nations in the field of human rights, would make a positive contribution to protecting children's rights and ensuring their well-being,

Bearing in mind that 1989 marks the thirtieth anniversary of the Declaration of the Rights of the Child and the tenth anniversary of the International Year of the Child,

1. Expresses its appreciation to the Commission on Human Rights for having concluded the elaboration of the draft convention on the rights of the child;
2. Adopts and opens for signature, ratification and accession the Convention on the Rights of the Child contained in the annex to the present resolution;
3. Calls upon all Member States to consider signing and ratifying or acceding to the Convention as a matter of priority and expresses the hope that it will come into force at an early date;
4. Requests the Secretary-General to provide all the facilities and assistance necessary for dissemination of information on the Convention;
5. Invites United Nations agencies and organizations, as well as intergovernmental and non-governmental organizations, to intensify their efforts with a view to disseminating information on the Convention and to promoting its understanding;

¹UNGA Doc A/RES/44/25 (12 December 1989) with Annex: <http://www.unhchr.ch/html/menu3/b/k2crc.htm>

6. Requests the Secretary-General to submit to the General Assembly at its forty-fifth session a report on the status of the Convention on the Rights of the Child;
7. Decides to consider the report of the Secretary-General at its forty-fifth session under an item entitled "Implementation of the Convention on the Rights of the Child".

61st plenary meeting

20 November 1989

ANNEX

Convention on the Rights of the Child

PREAMBLE

The States Parties to the present Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children,

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth",

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile justice (The Beijing Rules); and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict,

Recognizing that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child,

Recognizing the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries,

Have agreed as follows:

PART I

Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With

regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 6

1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.
2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to speedily re-establishing his or her identity.

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.
2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.
3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.
4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning

the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Article 10

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.
2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 2, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.
2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.
2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others; or (b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.
2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

Article 15

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.
2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.
2. The child has the right to the protection of the law against such interference or attacks.

Article 17

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health. To this end, States Parties shall:

- (a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;
- (b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;
- (c) Encourage the production and dissemination of children's books;
- (d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;
- (e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.
2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.
3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.
2. States Parties shall in accordance with their national laws ensure alternative care for such a child.
3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 21

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

- (a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;
- (b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;
- (c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;
- (d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;
- (e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Article 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth

in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

Article 23

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.
2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.
3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.
4. States Parties shall promote, in the spirit of international co-operation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.
2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations cooperating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:
 - (a) To diminish infant and child mortality;
 - (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
 - (c) To combat disease and malnutrition, including within the framework of primary health care, through, in particular, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;
 - (d) To ensure appropriate pre-natal and post-natal health care for mothers;
 - (e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breast-feeding, hygiene and environmental sanitation and the prevention of accidents;
 - (f) To develop preventive health care, guidance for parents and family planning education and services.
3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.
4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

Article 25

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

Article 26

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.
2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.
3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
 - (a) Make primary education compulsory and available free to all;
 - (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
 - (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
 - (d) Make educational and vocational information and guidance available and accessible to all children;
 - (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.
2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.
3. States Parties shall promote and encourage international co-operation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29

1. States Parties agree that the education of the child shall be directed to:
 - (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
 - (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
 - (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living; the country from which he or she may originate, and for civilizations different from his or her own;
 - (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
 - (e) The development of respect for the natural environment.
2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

Article 31

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.
2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 32

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.
2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:
 - (a) Provide for a minimum age or minimum ages for admission to employment;
 - (b) Provide for appropriate regulation of the hours and conditions of employment;
 - (c) Provide for appropriate penalties or other sanctions to ensure the, effective enforcement of the present article.

Article 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;

The exploitative use of children in pornographic performances and materials

Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Article 37

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 38

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.
2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.
3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.
4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.
2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:
 - (a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

- (b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:
 - (i) To be presumed innocent until proven guilty according to law;
 - (ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;
 - (iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;
 - (iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;
 - (v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;
 - (vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;
 - (vii) To have his or her privacy fully respected at all stages of the proceedings.
- 3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:
 - (a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;
 - (b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.
- 4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Article 41

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

- (a) The law of a State Party; or
- (b) International law in force for that State.

PART II

Article 42

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

Article 43

- 1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be

established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.

2. The Committee shall consist of ten experts of high moral standing and recognized competent in the field covered by this Convention. The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems.
3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.
4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.
5. The elections shall be held at meetings of States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.
6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.
7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.
8. The Committee shall establish its own rules of procedure.
9. The Committee shall elect its officers for a period of two years.
10. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.
11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.
12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.

Article 44

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights:
 - (a) Within two years of the entry into force of the Convention for the State Party concerned;
 - (b) Thereafter every five years.

2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfillment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.
3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b) of the present article, repeat basic information previously provided.
4. The Committee may request from States Parties further information relevant to the implementation of the Convention.
5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.
6. States Parties shall make their reports widely available to the public in their own countries.

Article 45

In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention:

- (a) The specialized agencies, the United Nations Children's Fund, and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;
- (b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications;
- (c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child;
- (d) The Committee may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.

PART III

Article 46

The present Convention shall be open for signature by all States.

Article 47

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 48

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 49

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession. 2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

Article 50

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.
2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.
3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.

Article 51

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.
2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.
3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General.

Article 52

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

Article 53

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

Article 54

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

In witness thereof the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

Code of Conduct- End Child Prostitution, Child Pornography and Trafficking on Children for Sexual Purpose (ECPAT) - 1998

A step towards a socially responsible travel and tourism industry²

The Code of Conduct for the Protection of Children from Sexual Commercial Exploitation in Travel and Tourism

Suppliers of tourism services adopting the code commit themselves to implement the following six criteria:

1. To establish an ethical policy regarding commercial sexual exploitation of children.
2. To train the personnel in the country of origin and travel destinations.
3. To introduce a clause in contracts with suppliers, stating a common repudiation of commercial sexual exploitation of children.
4. To provide information to travellers by means of catalogues, brochures, in-flight films, ticket-slips, home pages, etc.
5. To provide information to local "key persons" at the destinations.
6. To report annually.

Signing up for implementing The Code demonstrates the commitment of the tourism industry for practicing a socially responsible, child-wise tourism.

1. Establishment of an ethical policy regarding commercial sexual exploitation of children

The travel and tourism company shall set up a written company policy against commercial sexual exploitation of children. The company employees will be made aware of the existence of the policy, as part of their professional training.

²ECPAT groups, with an international Steering Committee financially supported by ECPAT Sweden and working on a voluntary basis. Directly following the successful Code launch in North America, held at the UNICEF headquarters in New York on April 21, 2004, the Code became non-profit organization, formally registered in Sweden with number 802418-2167, established May 5, 2004 (the Code Statute): In the last decades many corporations in the world started to increasingly acknowledge their role as corporate citizens in the society, and actively scrutinize the values supporting their operations. The travel and tourism industry makes no exception to this trend, and initiated efforts towards preventing and reducing the negative environmental and socio-cultural impacts which improperly managed tourism operations might induce. One of the most sensitive issues that the tourism industry faces in the last years refers to the phenomenon of commercial sexual exploitation of children mainly in developing countries, by tourists coming often from developed countries: <http://www.thecode.org/>

2. Training of employees in the country of origin and the travel destination

- The personnel of the travel and tourism company, agents, contracted hotel staff, regardless of nationality, sector of responsibility and terms of employment, has to be informed and individually trained in the Code of Conduct and its contents. The problem of commercial sexual exploitation of children has to be constantly in the attention of the staff as part of the service quality system, and internal information regarding the issue has to be made available and shared via the existing communication channels.
- After training, the employees of the company has to know how to proceed when they suspect that a traveller or other person is involved in commercial sexual exploitation of children (abuse, procuring, photographing etc.).
- A number of employees in "key positions"³ have to be trained as code instructors and internal monitors and they, in turn, train the rest of the staff of the company³. employees in 'key positions' are :- all staff who, in one way or another have contact with customers; local managers; travel guides; customer service personnel; buyers of hotel and accommodation services; contracted agents, etc.

3. Clause in contracts with suppliers stating a common repudiation of commercial sexual exploitation of children

A clause in the contract between the tourism company and its suppliers will stipulate that the contract will be cancelled if the supplier's owner and employees do not meet the commitments referring to the repudiation of commercial sexual exploitation of children in relation to their activities.

If possible, the Code of Conduct has to be made available to each contracted supplier, translated into the language of each recipient country. Important! Clauses in the contracts

Hotels are considered particularly important with respect to preventing and combating commercial sexual exploitation of children. The following measures are required for the hotels committed to adopt the code:

- a) To train all employees regarding the relevant local legislation, and with respect to the contract clause on the issue.
- b) Should hotel employees become aware of commercial sexual exploitation of children is occurring within the hotel, this should immediately be reported to the hotel manager, the tour operator and the local police.
- c) Hotel employees are barred from involvement in the commercial sexual exploitation of children.
- d) Upon setting up a contract, a provision will stipulate that the hotel shall display information boards or logos, stating that it does not accept commercial sexual exploitation of children on its premises.
- e) To accept independent verification of the procedures in place regarding responsible norms of behaviour with respect to commercial sexual exploitation of children, upon signing up for implementing the code.

³Note: personnel in 'key positions' is considered to be in the staff in position to actively prevent, influence and participate in the daily work of combating commercial sexual exploitation of children. Depending on the structure of the company, employees in 'key positions'

4. Provide information to travellers by means of catalogues, brochures, in-flight films, ticket-slips, home pages, etc.

Information to travellers should be provided by means of catalogues, brochures, ticket-slips, home pages, etc. The information will call the travellers' attention to the problem, by specifying contents of the Code of Conduct, and the commitment of the tourism company to the implementation of the code. Important information is to indicate the contacts that the travelers can use for providing anonymous tips/hotline.

4-step information model for the traveller:

- During the traveller's first contact with the company, information can be provided through home pages, travel agencies, catalogues, advertisements and brochures.
- With the ticket: on ticket-slips/jackets, luggage-tags etc.
- During the flight: in-flight films, on-board magazines
- At the travel destination: hotel lobbies, rooms, apartments, bars, restaurants, verbal information provided to the guests upon arrival to the destination.

5. Information to local key persons

An efficient way in which the travel and tourism companies could effectively contribute to the implementation of the Code is through providing information to local key persons⁴. These persons/parties will include individuals which usually have substantial contact with the customers (i.e. restaurant owners, bar owners, taxi drivers), as well as persons likely to have an influence within the community (i.e. decision makers, mayors, representative of local NGOs, etc). Important key persons as well are those engaged in labor unions and those who work within the local police authority. The key persons at the destinations will be informed about the adoption of the Code of Conduct. The aim is that those local parties who have provided information and/or training will be recommended to the traveller by the tourism company, orally and/or in writing.

6. Annual reporting

Companies adopting the Code have to report, on an annual basis, upon the implementation of the previous five criteria. The reporting form is currently under-development, and will be available to be downloaded from this web-site. The main purpose of the reporting process is to allow your experience, as a company currently working actively with the Code, to become known, and a source of inspiration for other members of the industry and with the civil society in general. Moreover, by reporting upon the challenges and the results of working with the Code, you can help the Steering Committee continuously improve the training and the know-how regarding the practical aspects of the implementation of the code. The reports submitted to the Steering Committee (through the Secretariat at the WTO) will not be made public, unless specifically authorised by the company submitting the report. Keen to take a stand on important issues relating to child welfare, and hopefully signing the Code would set an example for the industry to follow.

⁴ "Key persons" are considered to be those at the travel destination with whom the tourism company co-operates, without having a signed contract.

International Labour Organization- Conventions Number 182: Worst Forms of Child Labour Convention, 1999⁵

Article 1

Each Member which ratifies this Convention shall take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency.

Article 2

For the purposes of this Convention, the term "child" shall apply to all persons under the age of 18.

Article 3

For the purposes of this Convention, the term "the worst forms of child labour" comprises:

- (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

⁵ International Labour Organization, Convention on Child Rights, Convention Number 182- The General Conference of the International Labour Organization, Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 87th Session on 1 June 1999, and considering the need to adopt new instruments for the prohibition and elimination of the worst forms of child labour, as the main priority for national and international action, including international cooperation and assistance, to complement the Convention and the Recommendation concerning Minimum Age for Admission to Employment, 1973, which remain fundamental instruments on child labour, and Considering that the effective elimination of the worst forms of child labour requires immediate and comprehensive action, taking into account the importance of free basic education and the need to remove the children concerned from all such work and to provide for their rehabilitation and social integration while addressing the needs of their families, and Recalling the resolution concerning the elimination of child labour adopted by the International Labour Conference at its 83rd Session in 1996, and Recognizing that child labour is to a great extent caused by poverty and that the long-term solution lies in sustained economic growth leading to social progress, in particular poverty alleviation and universal education, and Recalling the Convention on the Rights of the Child adopted by the United Nations General Assembly on 20 November 1989, and Recalling the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted by the International Labour Conference at its 86th Session in 1998, and Recalling that some of the worst forms of child labour are covered by other international instruments, in particular the Forced Labour Convention, 1930, and the United Nations Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956, and Having decided upon the adoption of certain proposals with regard to child labour, which is the fourth item on the agenda of the session, and Having determined that these proposals shall take the form of an international Convention; adopts this seventeenth day of June of the year one thousand nine hundred and ninety-nine the following Convention, which may be cited as the Worst Forms of Child Labour Convention, 1999. <http://www.ilocarib.org.tt/childlabour/c182.htm>

Article 4

1. The types of work referred to under Article 3(d) shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned, taking into consideration relevant international standards, in particular Paragraphs 3 and 4 of the Worst Forms of Child Labour Recommendation, 1999.
2. The competent authority, after consultation with the organizations of employers and workers concerned, shall identify where the types of work so determined exist.
3. The list of the types of work determined under paragraph 1 of this Article shall be periodically examined and revised as necessary, in consultation with the organizations of employers and workers concerned.

Article 5

Each Member shall, after consultation with employers' and workers' organizations, establish or designate appropriate mechanisms to monitor the implementation of the provisions giving effect to this Convention.

Article 6

1. Each Member shall design and implement programmes of action to eliminate as a priority the worst forms of child labour.
2. Such programmes of action shall be designed and implemented in consultation with relevant government institutions and employers' and workers' organizations, taking into consideration the views of other concerned groups as appropriate.

Article 7

1. Each Member shall take all necessary measures to ensure the effective implementation and enforcement of the provisions giving effect to this Convention including the provision and application of penal sanctions or, as appropriate, other sanctions.
2. Each Member shall, taking into account the importance of education in eliminating child labour, take effective and time-bound measures to:
 - (a) prevent the engagement of children in the worst forms of child labour;
 - (b) provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration;
 - (c) ensure access to free basic education, and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labour;
 - (d) identify and reach out to children at special risk; and
 - (e) take account of the special situation of girls.
3. Each Member shall designate the competent authority responsible for the implementation of the provisions giving effect to this Convention.

Article 8

Members shall take appropriate steps to assist one another in giving effect to the provisions of this Convention through enhanced international cooperation and/or assistance including support for social and economic development, poverty eradication programmes and universal education.

Article 9

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 10

1. This Convention shall be binding only upon those Members of the International Labour Organization whose ratifications have been registered with the Director-General of the International Labour Office.
2. It shall come into force 12 months after the date on which the ratifications of two Members have been registered with the Director General.
3. Thereafter, this Convention shall come into force for any Member 12 months after the date on which its ratification has been registered.

Article 11

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.
2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 12

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organization of the registration of all ratifications and acts of denunciation communicated by the Members of the Organization.
2. When notifying the Members of the Organization of the registration of the second ratification, the Director-General shall draw the attention of the Members of the Organization to the date upon which the Convention shall come into force.

Article 13

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations, for registration in accordance with article 102 of the Charter of the United Nations, full particulars of all ratifications and acts of denunciation registered by the Director-General in accordance with the provisions of the preceding Articles.

Article 14

At such times as it may consider necessary, the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 15

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides -
 - (a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 11 above, if and when the new revising Convention shall have come into force;
 - (b) as from the date when the new revising Convention comes into force, this Convention shall cease to be open to ratification by the Members.
2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

United Nation World Tourism Organization (UNWTO) Global Code of Ethics for Tourism⁶- 1999

Resolution adopted by the General Assembly, 21 December 2001, A/RES/56/212 Global Code of Ethics for Tourism

The General Assembly,

Recalling its resolution 32/156 of 19 December 1977, by which it approved the Agreement on Cooperation and Relationships between the United Nations and the World Tourism Organization,

Reaffirming paragraph 5 of its resolution 36/41 of 19 November 1981, in which it decided that the World Tourism Organization might participate, on a continuing basis, in the work of the General Assembly in areas of concern to that organization,

Recalling the Manila Declaration on World Tourism of 10 October 1980 adopted under the auspices of the World Tourism Organization,¹ the Rio Declaration on Environment and Development² and Agenda 213 adopted at the United Nations Conference on Environment and Development on 14 June 1992, and taking note of the Amman Declaration on Peace through Tourism adopted at the Global Summit on Peace through Tourism on 11 November 2000.

Considering that the Commission on Sustainable Development, at its seventh session, held in April 1999, expressed interest in a global code of ethics for tourism and invited the World Tourism Organization to consider the participation of informed major groups in the development, implementation and monitoring of its global code of ethics for tourism,⁵

Recalling its resolution 53/200 of 15 December 1998 on the proclamation of 2002 as the International Year of Ecotourism, in which, inter alia, it reaffirmed Economic and Social Council resolution 1998/40 of 30 July 1998, recognizing the support of the World Tourism Organization for the importance of ecotourism, in particular the designation of the year 2002 as the International Year of Ecotourism, in fostering better understanding among peoples everywhere, in leading to greater awareness of the rich heritage of various civilizations and in bringing about a better appreciation of the inherent values of different cultures, thereby contributing to the strengthening of world peace,

Recognizing the important dimension and role of tourism as a positive instrument towards the alleviation of poverty and the improvement of the quality of life for all people, its potential to make a contribution to economic and social development, especially of the developing countries, and its emergence as a vital force for the promotion of international understanding, peace and prosperity,

1. Takes note with interest of the Global Code of Ethics for Tourism adopted at the thirteenth session of the General Assembly of the World Tourism Organization,⁶ which outlines principles to guide tourism development and to serve as a frame of reference for the different stakeholders in the tourism sector, with the objective of minimizing the negative impact of tourism on environment and on cultural heritage while maximizing the benefits of tourism in promoting sustainable development and poverty alleviation as well as understanding among nations;
2. Emphasizes the need for the promotion of a responsible and sustainable tourism that could be beneficial to all sectors of society;

⁶The Global Code of Ethics for Tourism (GCET) is a comprehensive set of principles whose purpose is to guide stakeholders in tourism development: central and local governments, local communities, the tourism industry and its professionals, as well as visitors, both international and domestic.

3. Invites Governments and other stakeholders in the tourism sector to consider introducing, as appropriate, the contents of the Global Code of Ethics for Tourism in relevant laws, regulations and professional practices, and, in this regard, recognizes with appreciation the efforts made and measures already undertaken by some States;
4. Encourages the World Tourism Organization to promote effective follow-up to the Global Code of Ethics for Tourism, with the involvement of relevant stakeholders in the tourism sector;
5. Requests the Secretary-General to follow up developments related to the implementation of the present resolution based on the reports of the World Tourism Organization and to report thereon to the General Assembly at its fifty-ninth session.

1 A/36/236, annex, appendix I.

2 Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992 (United Nations publications, Sales No. E.93.I.8 and corrigenda), vol. I: Resolutions adopted by the Conference, resolution 1, annex I.

3 Ibid., annex II.

4 See A/55/640.

PREAMBLE

We, Members of the World Tourism Organization (WTO), representatives of the world tourism industry, delegates of States, territories, enterprises, institutions and bodies that are gathered for the General Assembly at Santiago, Chile on this first day of October 1999, Reasserting the aims set out in Article 3 of the Statutes of the World Tourism Organization, and aware of the “decisive and central” role of this Organization, as recognized by the General Assembly of the United Nations, in promoting and developing tourism with a view to contributing to economic development, international understanding, peace, prosperity and universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion, Firmly believing that, through the direct, spontaneous and non-mediated right of all persons to use their free time for leisure pursuits or travel with respect for the choices of society of all peoples, But convinced that the world tourism industry as a whole has much to gain by operating in an environment that favours the market economy, private enterprise and free trade and that serves to optimize its beneficial effects on the creation of wealth and employment, Also firmly convinced that, provided a number of principles and a certain number of rules are observed, responsible and sustainable tourism is by no means incompatible with the growing liberalization of the conditions governing trade in services and under whose aegis the enterprises of this sector operate and that it is possible to reconcile in this sector economy and ecology, environment and development, openness to international trade and protection of social and cultural identities, Considering that, with such an Approach, all the stakeholders in tourism development - national, regional and local administrations, enterprises, business associations, workers in the sector, non-governmental organizations and bodies of all kinds belonging to the tourism industry, as well as host communities, the media and the tourists themselves, have different albeit interdependent responsibilities in the individual and societal development of tourism and that the formulation of their individual rights and duties will contribute to meeting this aim, Committed, in keeping with the aims pursued by the World Tourism Organization itself since adopting resolution

- Universal Declaration of Human Rights of 10 December 1948;
- International Covenant on Economic, Social and Cultural Rights of 16 December 1966;
- International Covenant on Civil and Political Rights of 16 December 1966;
- Warsaw Convention on Air Transport of 12 October 1929;

- Chicago Convention on International Civil Aviation of 7 December 1944, and the Tokyo, The Hague and Montreal Conventions in relation thereto;
- Convention on Customs Facilities for Tourism of 4 July 1954 and related Protocol;
- Convention concerning the Protection of the World Cultural and Natural Heritage of 23 November 1972;
- Manila Declaration on World Tourism of 10 October 1980;
- Resolution of the Sixth General Assembly of WTO (Sofia) adopting the Tourism Bill of Rights and Tourist Code of 26 September 1985;
- Convention on the Rights of the Child of 20 November 1989;
- Resolution of the Ninth General Assembly of WTO (Buenos Aires) concerning in particular travel facilitation and the safety and security of tourists of 4 October 1991;
- Rio Declaration on the Environment of their individual rights and duties will contribute to meeting this aim, Committed, in keeping with the aims pursued by the World Tourism Organization itself since adopting resolution 1966;



Tourism's contribution to mutual understanding and respect between peoples and societies

1. The understanding and promotion of the ethical values common to humanity, with an attitude of tolerance and respect for the diversity of religious, philosophical and moral beliefs, are both the foundation and the consequence of responsible tourism; stakeholders in tourism development and tourists themselves should observe the social and cultural traditions and practices of all peoples, including those of minorities and indigenous peoples and to recognize their worth;
2. Tourism activities should be conducted in harmony with the attributes and traditions of the host regions and countries and in respect for their laws, practices and customs;
3. The host communities, on the one hand, and local professionals, on the other, should acquaint themselves with and respect the tourists who visit them and find out about their lifestyles, tastes and expectations; the education and training imparted to professionals contribute to a hospitable welcome;
4. It is the task of the public authorities to provide protection for tourists and visitors and their belongings; they must pay particular attention to the safety of foreign tourists owing to the particular vulnerability they may have; they should facilitate the introduction of specific means of information, prevention, security, insurance and assistance consistent with their needs; any attacks, assaults, kidnappings or threats against tourists or workers in the tourism industry, as well as the wilful destruction of tourism facilities or of elements of cultural or natural heritage should be severely condemned and punished in accordance with their respective national laws;
5. When travelling, tourists and visitors should not commit any criminal act or any act considered criminal by the laws of the country visited and abstain from any conduct felt to be offensive or injurious by the local populations, or likely to damage the local environment; they should refrain from all trafficking in illicit drugs, arms, antiques, protected species and products and substances that are dangerous or prohibited by national regulations;

6. Tourists and visitors have the responsibility to acquaint themselves, even before their departure, with the characteristics of the countries they are preparing to visit; they must be aware of the health and security risks inherent in any travel outside their usual environment and behave in such a way as to minimize those risks;



Tourism as a vehicle for individual and collective fulfilment

1. Tourism, the activity most frequently associated with rest and relaxation, sport and access to culture and nature, should be planned and practised as a privileged means of individual and collective fulfilment; when practised with a sufficiently open mind, it is an irreplaceable factor of self-education, mutual tolerance and for learning about the legitimate differences between peoples and cultures and their diversity;
2. Tourism activities should respect the equality of men and women; they should promote human rights and, more particularly, the individual rights of the most vulnerable groups, notably children, the elderly, the handicapped, ethnic minorities and indigenous peoples;
3. The exploitation of human beings in any form, particularly sexual, especially when applied to children, conflicts with the fundamental aims of tourism and is the negation of tourism; as such, in accordance with international law, it should be energetically combatted with the cooperation of all the States concerned and penalized without concession by the national legislation of both the countries visited and the countries of the perpetrators of these acts, even when they are carried out abroad;
4. Travel for purposes of religion, health, education and cultural or linguistic exchanges are particularly beneficial forms of tourism, which deserve encouragement;



5. The introduction into curricula of education about the value of tourist exchanges, their economic, social and cultural benefits, and also their risks, should be encouraged;

Tourism, a factor of sustainable development

1. All the stakeholders in tourism development should safeguard the natural environment with a view to achieving sound, continuous and sustainable economic growth geared to satisfying equitably the needs and aspirations of present and future generations;
2. All forms of tourism development that are conducive to saving rare and precious resources, in particular water and energy, as well as avoiding so far as possible waste production, should be given priority and encouraged by national, regional and local public authorities;

3. The staggering in time and space of tourist and visitor flows, particularly those resulting from paid leave and school holidays, and a more even distribution of holidays should be sought so as to reduce the pressure of tourism activity on the environment and enhance its beneficial impact on the tourism industry and the local economy;
4. Tourism infrastructure should be designed and tourism activities programmed in such a way as to protect the natural heritage composed of ecosystems and biodiversity and to preserve endangered species of wildlife; the stakeholders in tourism development, and especially professionals, should agree to the imposition of limitations or constraints on their activities when these are exercised in particularly sensitive areas: desert, polar or high mountain regions, coastal areas, tropical forests or wetlands, propitious to the creation of nature reserves or protected areas;



5. Nature tourism and ecotourism are recognized as being particularly conducive to enriching and enhancing the standing of tourism, provided they respect the natural heritage and local populations and are in keeping with the carrying capacity of the sites;

Tourism, a user of the cultural heritage of mankind and a contributor to its enhancement

1. Tourism resources belong to the common heritage of mankind; the communities in whose territories they are situated have particular rights and obligations to them;
2. Tourism policies and activities should be conducted with respect for the artistic, archaeological and cultural heritage, which they should protect and pass on to future generations; particular care should be devoted to preserving and upgrading monuments, shrines and museums as well as archaeological and historic sites which must be widely open to tourist visits; encouragement should be given to public access to privately-owned cultural property and monuments, with respect for the rights of their owners, as well as to religious buildings, without prejudice to normal needs of worship;



3. Financial resources derived from visits to cultural sites and monuments should, at least in part, be used for the upkeep, safeguard, development and embellishment of this heritage;
4. Tourism activity should be planned in such a way as to allow traditional cultural products, crafts and folklore to survive and flourish, rather than causing them to degenerate and become standardized;

Tourism, a beneficial activity for host countries and communities

1. Local populations should be associated with tourism activities and share equitably in the economic, social and cultural benefits they generate, and particularly in the creation of direct and indirect jobs resulting from them;
2. Tourism policies should be applied in such a way as to help to raise the standard of living of the populations of the regions visited and meet their needs; the planning and architectural approach to and operation of tourism resorts and accommodation

should aim to integrate them, to the extent possible, in the local economic and social fabric; where skills are equal, priority should be given to local manpower;

3. Special attention should be paid to the specific problems of coastal areas and island territories and to vulnerable rural or mountain regions, for which tourism often represents a rare opportunity for development in the face of the decline of traditional economic activities;



4. Tourism professionals, particularly investors, governed by the regulations laid down by the public authorities, should carry out studies of the impact of their development projects on the environment and natural surroundings; they should also deliver, with the greatest transparency and objectivity, information on their future programmes and their foreseeable repercussions and foster dialogue on their contents with the populations concerned;

Obligations of stakeholders in tourism development

1. Tourism professionals have an obligation to provide tourists with objective and honest information on their places of destination and on the conditions of travel, hospitality and stays; they should ensure that the contractual clauses proposed to their customers are readily understandable as to the nature, price and quality of the services they commit themselves to providing and the financial compensation payable by them in the event of a unilateral breach of contract on their part;
2. Tourism professionals, insofar as it depends on them, should show concern, in cooperation with the public authorities, for the security and safety, accident prevention, health protection and food safety of those who seek their services; likewise, they should ensure the existence of suitable systems of insurance and assistance; they should accept the reporting obligations prescribed by national regulations and pay fair compensation in the event of failure to observe their contractual obligations;
3. Tourism professionals, so far as this depends on them, should contribute to the cultural and spiritual fulfilment of tourists and allow them, during their travels, to practise their religions;
4. The public authorities of the generating States and the host countries, in cooperation with the professionals concerned and their associations, should ensure that the necessary mechanisms are in place for the repatriation of tourists in the event of the bankruptcy of the enterprise that organized their travel;



5. Governments have the right - and the duty - especially in a crisis, to inform their nationals of the difficult circumstances, or even the dangers they may encounter during their travels abroad; it is their responsibility however to issue such information without prejudicing in an unjustified or exaggerated manner the tourism industry of the host countries and the interests of their own operators; the contents of travel advisories should therefore be discussed beforehand with the authorities of the host countries and the professionals concerned;

recommendations formulated should be strictly proportionate to the gravity of the situations encountered and confined to the geographical areas where the insecurity has arisen; such advisories should be qualified or cancelled as soon as a return to normality permits;

6. The press, and particularly the specialized travel press and the other media, including modern means of electronic communication, should issue honest and balanced information on events and situations that could influence the flow of tourists; they should also provide accurate and reliable information to the consumers of tourism services; the new communication and electronic commerce technologies should also be developed and used for this purpose; as is the case for the media, they should not in any way promote sex tourism;

Right to tourism

1. The prospect of direct and personal access to the discovery and enjoyment of the planet's resources constitutes a right equally open to all the world's inhabitants; the increasingly extensive participation in national and international tourism should be regarded as one of the best possible expressions of the sustained growth of free time, and obstacles should not be placed in its way;



2. The universal right to tourism must be regarded as the corollary of the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay, guaranteed by Article 24 of the Universal Declaration of Human Rights and Article 7.d of the International Covenant on Economic, Social and Cultural Rights;
3. Social tourism, and in particular associative tourism, which facilitates widespread access to leisure, travel and holidays, should be developed with the support of the public authorities;
4. Family, youth, student and senior tourism and tourism for people with disabilities, should be encouraged and facilitated;

Liberty of tourist movements

1. Tourists and visitors should benefit, in compliance with international law and national legislation, from the liberty to move within their countries and from one State to another, in accordance with Article 13 of the Universal Declaration of Human Rights; they should have access to places of transit and stay and to tourism and cultural sites without being subject to excessive formalities or discrimination;



2. Tourists and visitors should have access to all available forms of communication, internal or external; they should benefit from prompt and easy access to local administrative, legal and health services; they should be free to contact the consular representatives of their countries of origin in compliance with the diplomatic conventions in force;
3. Tourists and visitors should benefit from the same rights as the citizens of the country visited concerning the confidentiality of the personal data and information concerning them, especially when these are stored electronically;

4. Administrative procedures relating to border crossings whether they fall within the competence of States or result from international agreements, such as visas or health and customs formalities, should be adapted, so far as possible, so as to facilitate to the maximum freedom of travel and widespread access to international tourism; agreements between groups of countries to harmonize and simplify these procedures should be encouraged; specific taxes and levies penalizing the tourism industry and undermining its competitiveness should be gradually phased out or corrected;
5. So far as the economic situation of the countries from which they come permits, travellers should have access to allowances of convertible currencies needed for their travels;

Rights of the workers and entrepreneurs in the tourism industry

1. The fundamental rights of salaried and self-employed workers in the tourism industry and related activities, should be guaranteed under the supervision of the national and local administrations, both of their States of origin and of the host countries with particular care, given the specific constraints linked in particular to the seasonality of their activity, the global dimension of their industry and the flexibility often required of them by the nature of their work;
2. Salaried and self-employed workers in the tourism industry and related activities have the right and the duty to acquire appropriate initial and continuous training; they should be given adequate social protection; job insecurity should be limited so far as possible; and a specific status, with particular regard to their social welfare, should be offered to seasonal workers in the sector;



3. Any natural or legal person, provided he, she or it has the necessary abilities and skills, should be entitled to develop a professional activity in the field of tourism under existing national laws; entrepreneurs and investors - especially in the area of small and medium-sized enterprises - should be entitled to free access to the tourism sector with a minimum of legal or administrative restrictions;
4. Exchanges of experience offered to executives and workers, whether salaried or not, from different countries, contribute to foster the development of the world tourism industry; these movements should be facilitated so far as possible in compliance with the applicable national laws and international conventions;
5. As an irreplaceable factor of solidarity in the development and dynamic growth of international exchanges, multinational enterprises of the tourism industry should not exploit the dominant positions they sometimes occupy; they should avoid becoming the vehicles of cultural and social models artificially imposed on the host communities; in exchange for their freedom to invest and trade which should be fully recognized, they should involve themselves in local development, avoiding, by the excessive repatriation of their profits or their induced imports, a reduction of their contribution to the economies in which they are established;

Optional Protocol to the Convention on the Rights of the Child (CRC) on the sale of Children, Child Prostitution and Child Pornography⁸ - 2002

The States Parties to the present Protocol,

Considering that, in order further to achieve the purposes of the Convention on the Rights of the Child and the implementation of its provisions, especially articles 1, 11, 21, 32, 33, 34, 35 and 36, it would be appropriate to extend the measures that States Parties should undertake in order to guarantee the protection of the child from the sale of children, child prostitution and child pornography,

Considering also that the Convention on the Rights of the Child recognizes the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development,

Gravely concerned at the significant and increasing international traffic in children for the purpose of the sale of children, child prostitution and child pornography,

Deeply concerned at the widespread and continuing practice of sex tourism, to which children are especially vulnerable, as it directly promotes the sale of children, child prostitution and child pornography,

Recognizing that a number of particularly vulnerable groups, including girl children, are at greater risk of sexual exploitation and that girl children are disproportionately represented among the sexually exploited,

Concerned about the growing availability of child pornography on the Internet and other evolving technologies, and recalling the International Conference on Combating Child Pornography on the Internet, held in Vienna in 1999, in particular its conclusion calling for the worldwide criminalization of the production, distribution, exportation, transmission, importation, intentional possession and advertising of child pornography, and stressing the importance of closer cooperation and partnership between Governments and the Internet industry,

Believing that the elimination of the sale of children, child prostitution and child pornography will be facilitated by adopting a holistic approach, addressing the contributing factors, including underdevelopment, poverty, economic disparities, inequitable socio-economic structure, dysfunctioning families, lack of education, urban-rural migration, gender discrimination, irresponsible adult sexual behaviour, harmful traditional practices, armed conflicts and trafficking in children, possession and advertising of child pornography, and stressing the importance of closer cooperation and partnership between Governments and the Internet industry,

Believing that the elimination of the sale of children, child prostitution and child pornography will be facilitated by adopting a holistic approach, addressing the contributing factors, including underdevelopment, poverty, economic disparities, inequitable socio-economic structure, dysfunctioning families, lack of education, urban-rural migration, gender discrimination, irresponsible adult sexual behaviour, harmful traditional practices, armed conflicts and trafficking in children,

⁸ Adopted and opened for signature, ratification and accession by General Assembly resolution, RES/54/263 of 25 May 2000 entered into force on 18 January 2002, <http://www.ohchr.org/english/law/crc-sale.htm>

Believing also that efforts to raise public awareness are needed to reduce consumer demand for the sale of children, child prostitution and child pornography, and believing further in the importance of strengthening global partnership among all actors and of improving law enforcement at the national level,

Noting the provisions of international legal instruments relevant to the protection of children, including the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, the Hague Convention on the Civil Aspects of International Child Abduction, the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children, and International Labour Organization Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour,

Encouraged by the overwhelming support for the Convention on the Rights of the Child, demonstrating the widespread commitment that exists for the promotion and protection of the rights of the child,

Recognizing the importance of the implementation of the provisions of the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography and the Declaration and Agenda for Action adopted at the World Congress against Commercial Sexual Exploitation of Children, held in Stockholm from 27 to 31 August 1996, and the other relevant decisions and recommendations of pertinent international bodies,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child,

Have agreed as follows:

ARTICLE 1

States Parties shall prohibit the sale of children, child prostitution and child pornography as provided for by the present Protocol.

ARTICLE 2

For the purposes of the present Protocol:

- (a) Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;
- (b) Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration;
- (c) Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.

ARTICLE 3

- 1. Each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether such offences are committed domestically or transnationally or on an individual or organized basis:
 - (a) In the context of sale of children as defined in article 2:
 - (i) Offering, delivering or accepting, by whatever means, a child for the purpose of:
 - a. Sexual exploitation of the child;

- b. Transfer of organs of the child for profit;
- c. Engagement of the child in forced labour;
- (ii) Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption;
- (b) Offering, obtaining, procuring or providing a child for child prostitution, as defined in article 2;
- (c) Producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined in article 2.
- 2. Subject to the provisions of the national law of a State Party, the same shall apply to an attempt to commit any of the said acts and to complicity or participation in any of the said acts.
- 3. Each State Party shall make such offences punishable by appropriate penalties that take into account their grave nature.
- 4. Subject to the provisions of its national law, each State Party shall take measures, where appropriate, to establish the liability of legal persons for offences established in paragraph 1 of the present article. Subject to the legal principles of the State Party, such liability of legal persons may be criminal, civil or administrative.
- 5. States Parties shall take all appropriate legal and administrative measures to ensure that all persons involved in the adoption of a child act in conformity with applicable international legal instruments.

ARTICLE 4

- 1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, when the offences are committed in its territory or on board a ship or aircraft registered in that State.
- 2. Each State Party may take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, in the following cases:
 - (a) When the alleged offender is a national of that State or a person who has his habitual residence in its territory;
 - (b) When the victim is a national of that State.
- 3. Each State Party shall also take such measures as may be necessary to establish its jurisdiction over the aforementioned offences when the alleged offender is present in its territory and it does not extradite him or her to another State Party on the ground that the offence has been committed by one of its nationals.
- 4. The present Protocol does not exclude any criminal jurisdiction exercised in accordance with internal law.

ARTICLE 5

- 1. The offences referred to in article 3, paragraph 1, shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties and shall be included as extraditable offences in every extradition treaty subsequently concluded between them, in accordance with the conditions set forth in such treaties.

2. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider the present Protocol to be a legal basis for extradition in respect of such offences. Extradition shall be subject to the conditions provided by the law of the requested State.
3. States Parties that do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.
4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 4.
5. If an extradition request is made with respect to an offence described in article 3, paragraph 1, and the requested State Party does not or will not extradite on the basis of the nationality of the offender, that State shall take suitable measures to submit the case to its competent authorities for the purpose of prosecution.

ARTICLE 6

1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in article 3, paragraph 1, including assistance in obtaining evidence at their disposal necessary for the proceedings.
2. States Parties shall carry out their obligations under paragraph 1 of the present article in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

ARTICLE 7

States Parties shall, subject to the provisions of their national law:

- (a) Take measures to provide for the seizure and confiscation, as appropriate, of:
 - (i) Goods, such as materials, assets and other instrumentalities used to commit or facilitate offences under the present protocol;
 - (ii) Proceeds derived from such offences;
- (b) Execute requests from another State Party for seizure or confiscation of goods or proceeds referred to in subparagraph (a);
- (c) Take measures aimed at closing, on a temporary or definitive basis, premises used to commit such offences.

ARTICLE 8

1. States Parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process, in particular by:
 - (a) Recognizing the vulnerability of child victims and adapting procedures to recognize their special needs, including their special needs as witnesses;

- (b) Informing child victims of their rights, their role and the scope, timing and progress of the proceedings and of the disposition of their cases;
 - (c) Allowing the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected, in a manner consistent with the procedural rules of national law;
 - (d) Providing appropriate support services to child victims throughout the legal process;
 - (e) Protecting, as appropriate, the privacy and identity of child victims and taking measures in accordance with national law to avoid the inappropriate dissemination of information that could lead to the identification of child victims;
 - (f) Providing, in appropriate cases, for the safety of child victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;
 - (g) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation to child victims.
2. States Parties shall ensure that uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations, including investigations aimed at establishing the age of the victim.
 3. States Parties shall ensure that, in the treatment by the criminal justice system of children who are victims of the offences described in the present Protocol, the best interest of the child shall be a primary consideration.
 4. States Parties shall take measures to ensure appropriate training, in particular legal and psychological training, for the persons who work with victims of the offences prohibited under the present Protocol.
 5. States Parties shall, in appropriate cases, adopt measures in order to protect the safety and integrity of those persons and/or organizations involved in the prevention and/or protection and rehabilitation of victims of such offences.
 6. Nothing in the present article shall be construed to be prejudicial to or inconsistent with the rights of the accused to a fair and impartial trial.

ARTICLE 9

1. States Parties shall adopt or strengthen, implement and disseminate laws, administrative measures, social policies and programmes to prevent the offences referred to in the present Protocol. Particular attention shall be given to protect children who are especially vulnerable to such practices.
2. States Parties shall promote awareness in the public at large, including children, through information by all appropriate means, education and training, about the preventive measures and harmful effects of the offences referred to in the present Protocol. In fulfilling their obligations under this article, States Parties shall encourage the participation of the community and, in particular, children and child victims, in such information and education and training programmes, including at the international level.
3. States Parties shall take all feasible measures with the aim of ensuring all appropriate assistance to victims of such offences, including their full social reintegration and their full physical and psychological recovery.
4. States Parties shall ensure that all child victims of the offences described in the present Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible.
5. States Parties shall take appropriate measures aimed at effectively prohibiting the production and dissemination of material advertising the offences described in the present Protocol.

ARTICLE 10

1. States Parties shall take all necessary steps to strengthen international cooperation by multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism. States Parties shall also promote international cooperation and coordination between their authorities, national and international non-governmental organizations and international organizations.
2. States Parties shall promote international cooperation to assist child victims in their physical and psychological recovery, social reintegration and repatriation.
3. States Parties shall promote the strengthening of international cooperation in order to address the root causes, such as poverty and underdevelopment, contributing to the vulnerability of children to the sale of children, child prostitution, child pornography and child sex tourism.
4. States Parties in a position to do so shall provide financial, technical or other assistance through existing multilateral, regional, bilateral or other programmes.

ARTICLE 11

Nothing in the present Protocol shall affect any provisions that are more conducive to the realization of the rights of the child and that may be contained in:

- (a) The law of a State Party;
- (b) International law in force for that State.

ARTICLE 12

1. Each State Party shall, within two years following the entry into force of the present Protocol for that State Party, submit a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Protocol.
2. Following the submission of the comprehensive report, each State Party shall include in the reports they submit to the Committee on the Rights of the Child, in accordance with article 44 of the Convention, any further information with respect to the implementation of the present Protocol. Other States Parties to the Protocol shall submit a report every five years.
3. The Committee on the Rights of the Child may request from States Parties further information relevant to the implementation of the present Protocol.

ARTICLE 13

1. The present Protocol is open for signature by any State that is a party to the Convention or has signed it.
2. The present Protocol is subject to ratification and is open to accession by any State that is a party to the Convention or has signed it. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.

ARTICLE 14

1. The present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession.
2. For each State ratifying the present Protocol or acceding to it after its entry into force, the Protocol shall enter into force one month after the date of the deposit of its own instrument of ratification or accession.

ARTICLE 15

1. Any State Party may denounce the present Protocol at any time by written notification to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the Convention and all States that have signed the Convention. The denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.
2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any offence that occurs prior to the date on which the denunciation becomes effective. Nor shall such a denunciation prejudice in any way the continued consideration of any matter that is already under consideration by the Committee on the Rights of the Child prior to the date on which the denunciation becomes effective.

ARTICLE 16

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.
2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly and accepted by a two-thirds majority of States Parties.
3. When an amendment enters into force, it shall be binding on those States Parties that have accepted it, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments they have accepted.

ARTICLE 17

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States Parties to the Convention and all States that have signed the Convention.

section 5



Appendices

Appendix I

Press Information Bureau Government of India

Tuesday, August 01, 2006 EMPLOYMENT OF CHILDREN AS DOMESTIC SERVANTS AND IN DHABAS BANNED FROM OCTOBER

Ministry of Labour & Employment

The government has decided to prohibit employment of children as domestic servants or servants or in dhabas (roadside eateries), restaurants, hotels, motels, teashops, resorts, spas or in other recreational centres. The ban has been imposed under the Child Labour (Prohibition & Regulation) Act, 1986 and will be effective from 10th October 2006. The Ministry of Labour has recently issued a notification to this effect giving three-month mandatory notice. The Ministry has warned that anyone employing children in these categories would be liable to prosecution and other panel action under the Act.

It may be recalled that the government servants have already been prohibited from employing children as domestic servants. By issuing this notification, the Government has imposed these restrictions on everyone.

The decision has been taken on the recommendation of the Technical Advisory Committee on Child Labour headed by the Director General, ICMR. The Committee considers the occupations mentioned in the above notification as hazardous for children and has recommended their inclusion in the occupations which are prohibited for persons below 14 years under the Child Labour (Prohibition & Regulation) Act, 1986. The Committee while recommending a ban on employing children in these occupations had said that these children are subjected to physical violence, psychological traumas and at times even sexual abuse. It said that invariably such incidents go unnoticed and unreported as they take place in the close confines of the households or dhabas or restaurants. It said that these children are made to work for long hours and are made to undertake various hazardous activities severely affecting their health and psyche. The Committee has said that the children employed in road-side eateries and highway dhabas were the most vulnerable lot and were easy prey to sex and drug abuse as they came in contact with all kinds of people. The measure is expected to go a long way in ameliorating the condition of hapless working children. The Labour Ministry is also contemplating to strengthen and expand its rehabilitative Scheme of National Child Labour Project, which already covers 250 child labour endemic districts in the country. MLD//L-53 (cpi-iw) 1.8.06

Appendix II

Analysis of The Goa Childrens Act 2003 in the Context Tourism

Section	Sub - Section	Issue	Amendment introduced	What the Goa Children's Act Says	What Amendment Says	Tourism Perspective	Impacts	EQS Concerns/position
Sec 7	Sec 7 (2) (d)	CHILD LABOUR	Child Labour and Trafficking	All forms of employment- including ones seen in the tourism destinations such as children self employed in labour like nut selling, running errands, carrying loads to shoppers, rag picking, plastic bag selling, etc, is prohibited.	The timelines/time restrictions imposed on the government on implementation of this provision has been to diluted. With respect to government's responsibility to implement the Act the wordings of the original Act " Within a period of 2 years from the commencement of this Act" has been substituted by " in a phased manner".	Though the government of Goa came out with this provision in 2003, we still see children engaged in selling of trinkets; nuts;tea etc in the beaches and road sides and also being employed in shacks and small restaurants.	Employment of children in these occupations makes them vulnerable to exploitation. It affects their right to be protected from all kind of abuse and maltreatment.	Tourism should be a child friendly. Children should be protected from all forms of exploitation in all tourist destinations. But in reality child labour is high in the tourist destinations of Goa. The government has completely obliterated it's duties and have taken no action towards implementing the existing law on child labour.
	Sec 7 (3)			The Government is liable to identify the child labourers and placed in children's homes or State run institutions and other places identified under the plan of Action.				What actions has been initiated by the Government?
	Sec 7(4)			The State is bound by this law to ensure that a Rehabilitation Programme is made.				Is any Rehabilitation Programme in place ?

Section	Sub - Section	Issue	Amendment introduced	What the Goa Children's Act Says	What Amendment Says	Tourism Perspective	Impacts	EQS Concerns/position
	Sec 7(6) & 7(7)			The State is bound by this law to formulate a Plan of Action to eradicate all forms of child labour within a period of 2 years. Plan of Action shall be implemented phase-wise over a period of 2 years.	The amendment dilutes the timelines. It also deletes the words "over a period of 2 years" with respect to phasewise implementation of the Plan of Action.			Has any Plan of Action been implemented? Why governments should be given discounts in implementing provisions?
	Sec 7 (9)			Trafficking in Children for the purpose of employment shall be prohibited. A any person employs, aids or abets trafficked children will be penalised.	This clause was substituted stating that the district police, airport police, traffic police, border police, labour inspectors and railways police shall immediately take cognizance of all reports of offences of child labour or child trafficking and shall investigate into the matter for further necessary action.	A very welcome move as far as protection of children is concerned. These are the key points where such children can be intercepted and thus protected. Tourism plays a key role in creating situations which encourages child labour resulting in trafficking of children.	A very welcome move as far as protection of children is concerned. These are the key points where such children can be intercepted and thus protected. Tourism plays a key role in creating situations which encourages child labour resulting in trafficking of children.	EQUATIONS believes if the public authorities truly make use of this provision and fulfill their duties and responsibilities in the true spirit, many cases of exploitation can be intercepted and stopped.

Section	Sub - Section	Issue	Amendment introduced	What the Goa Children's Act Says	What Amendment Says	Tourism Perspective	Impacts	EQS Concerns/position
Section 8		CHILD ABUSE	Child Abuse and Trafficking	The original Act referred this section as on Child Abuse.	The amendment adds the words "and Trafficking" to the title of child abuse thus acknowledging that tourism has given rise to evils like child abuse and child trafficking in Goa.	Tourism, trafficking and abuse of children is rampant in many tourism destinations. Goa is no exception. This interlinkage and measures to protect children from such exploitation has been campaigned by all the civil society groups working in Goa. This provision acknowledges the same and calls for action.		
	Sec 8 (4)			Onus on adults fixed by the Act- All persons who keep with them or reside with one or more children, not related by blood, shall inform this fact immediately to the Director. It will be the responsibility of the person to give this information either in person and obtain a receipt or to send it by Registered post.	Prohibition of cohabitation of adults and children without blood relationship - The amendment prohibit adults to reside or keep any child who is not related by blood without permission from the competent authority. The responsibility of taking permission shall lie with the person who resides or wishes to reside with a child not related by blood.	The case studies from Goa show that Goa has been and continues to be a destination frequented by paedophiles, mostly as tourists- adults who exploit children for sexual gratification. In most of such cases, both officially reported and unreported, these are adults who visit Goa in search of sex with children from places outside.	Prohibitory provisions are likely to make government and it's agencies more responsible in stopping exploitation of children. The incidents of child sexual abuse would be reduced as keeping children without obtaining permission from the competent authorities have been made punishable.	It is a welcome move and should be implemented in the true spirit.

Section	Sub - Section	Issue	Amendment introduced	What the Goa Children's Act Says	What Amendment Says	Tourism Perspective	Impacts	EQS Concerns/position
	8(10)(a)-(d)	Tourism Establishments have to prove that no abuse / exploitation of children happens in their premises and adjoining areas.		All Hotels, and other establishments providing boarding or lodging or any similar facility shall ensure that children are safe and not at risk of child abuse within their premises including all adjoining beaches, parks etc.	No Amendments	In the past the industry has never acknowledged incidents of exploitation of children within their premises and adjoining areas, refused reporting such incidents to police and other authorities, never taken any action against such incidents, rejected moral/ legal responsibility of abetment of crime.	The tourism industry has been made legally liable and responsible towards protecting children. They are provided with legal authority to question any tourist accompanied with the children.	Fixing of liability on the tourism industry was a very positive move. The expansion of their responsibility to adjoining areas beyond their premises like beaches, parks etc enhances their responsibility and bars them from taking excuses that they cannot be held liable for what happens outside the four walls of their business premises.
	Sec 8 (10)(e)		Penalty	The Act had only stated that the owner and manager of the hotel or establishments shall be held responsible for any violations and shall be charged with non-bailable offence under Criminal Procedure Code (CrPC).	The amendment fixes specific punishment of imprisonment for a term which may extend to 3 years and to a fine which may extend to Rs. 1,00,000/-.	Has made the tourism industry responsible		

Section	Sub - Section	Issue	Amendment introduced	What the Goa Children's Act Says	What Amendment Says	Tourism Perspective	Impacts	EQS Concerns/position
	Sec 8 (11)	Offence in case of tourism related child sexual abuse shall be non-bailable offence under CrPC	<i>This entire provision has been omitted.</i>	Offence in case of tourism related child sexual abuse, shall be non-bailable offence as defined under Section 2 (a) of the Code of Criminal Procedure, 1973	This clause has been omitted	This Provision (in the original Act) was acknowledgement of the fact that children are sexually abused and exploited by tourists in Goa.	Omission of this clause will once again establish conducive atmosphere for tourists to engage in child sexual abuse and exploitation and trafficking in Goa. This actually makes the Act toothless in relation to sexual exploitation of children by tourists in Goa, especially tourists from far of places to escape the punishment under law.	Omission of this clause is condemned. Such irresponsible and irrational action by the legislators once again prove that for them exchequer gained through tourism is of much more importance than the lives of the children.
	Sec 8 (15)	Responsibility conferred on Public authorities with respect to reporting of suspected cases of trafficking of children for abuse and exploitation by adults to competent authority.	The 'District Police' was included in the list of public authorities who were delegated duty to identify and report suspected cases of trafficking of children for exploitation and abuse by adults.	Airport authorities, border police, railway police, traffic police shall report any suspected case of trafficking of children or an adult travelling with a child under suspicious circumstances. Such adults may be detained for questioning at the nearest police station	The Amendment has conferred the duty of protection of children also to 'the District Police'. Moreover, the amendment has extended the protection to all forms of exploitation of children- (a) Child abuse or (b) an adult travelling with or keeping a child under suspicious circumstance or (c) sale of children or (d) sexual offence with child or (e) child trafficking. These public authorities upon suspicion shall report it to the officer in charge of the nearest police station who shall immediately take cognizance.	Children need protection at every point and need assistance from all public authorities to stop violations of their rights.	Expansion of protective measures will surely help in stopping child sexual abuse and trafficking of children by adults, including the paedophiles. Leads to immediate action if promptly reported.	Is this provision actually getting implemented? How many cases have been referred/ reported by these Public authorities to the competent authority since the amendment has been passed?

Section	Sub - Section	Issue	Amendment introduced	What the Goa Children's Act Says	What Amendment Says	Tourism Perspective	Impacts	EQS Concerns/position
	Sec 8 (22)	The Tourism Department of Goa will evolve a Child Friendly Tourism Code for the State.		The Tourism department of the government shall collaborate with the Trade and Tourism of Goa to evolve a Child Friendly Tourism Code for Goa	Staus quo is maintained	Government and the tourism industry will work together to ensure the safety of children in the tourism destination. The code will be used as a protective means to protect children from exploitation.	Since the provision imposes the liability on the Tourism Department, it re-emphasises the magnitude of the issue of exploitation of children in tourism destination like Goa. Being a collaborative effort of the Department of Tourism with the Travel industry, cannot be dumped either by the Dept. or by the industry as anti-tourism.	An excellent provision to expand the web of protection through the major players of tourism. However, the question arises has the Child Friendly Tourism Code for Goa been drafted? What actions have been taken by the Tourism Department in this regard? Reportedly, the NGOs are involved in the process of preparing the code for government and the industry. Will that be accepted by the Tourism Department and the industry?

Section	Sub - Section	Issue	Amendment introduced	What the Goa Children's Act Says	What Amendment Says	Tourism Perspective	Impacts	EQS Concerns/position
Section 13	Sec 13 (5) ©	Capacity Development strategy for progressive implementation of Child Rights by various stakeholders	Have included 'prosecution' in the list of stakeholders whose capacity building is propagated.	Develop a capacity development strategy for the progression of implementation of Child Rights covering amongst others the training of teacher, police, judiciary etc	They have added 'Prosecution'. However did not include the 'Tourism Industry'.	Tourism industry, law enforcement officials, judiciary etc play important role in implementation and protection of child rights.	Strategy for capacity building of the afore mentioned stakeholders is very essential for implementation and protection of child right everywhere.	The importance of capacity building of the tourism Industry, specially in relation to tourism destinations cannot be overlooked. It is important to involve the industry as the industry plays a major role in promoting and controlling tourism. The amendment failed to acknowledge and introduce the much needed intervention.
	Sec13 (5) (e)	To monitor the implementation of the CRC. However no mechanism was spelt out.		To monitor the implementation of the Convention of the Rights to the Child	Did not spell out the monitoring mechanism.	Monitoring of implementation of CRC is most vital in protecting the rights of the children. Extremely important Goan NGOs along with the govt. has taken steps to make the tourists and others aware of the child rights.	Impacts unknown.	The Act as well as the Amendment does not clarify the monitoring mechanism- Who needs to monitor- police, local authorities, govt. who? What actions should be taken? How it should be evaluated? How often such monitoring should be undertaken etc remains completely unanswered and vague.

Section	Sub - Section	Issue	Amendment introduced	What the Goa Children's Act Says	What Amendment Says	Tourism Perspective	Impacts	EQS Concerns/position
	Sec 13 (14)	Formulation of Child Code by Police Department		The police department shall formulate an exclusive Child Code including issues of child friendly police stations, interaction and behaviour with children, mandatory sensitization programme etc.	No amendments	Very important provision. In all cases of conflict with law, be it tourism related or otherwise, the child comes in close contact with Police. Formulation of an exclusive Child Code will ensure that Police are made aware of the issues and concerns with respect to the children.	The idea was to develop sensitive, child friendly police, who would help children in distress. Also develop tourist police as part of this activity to help children trafficked and/or abused by tourists. Also have a cell in DOT to address the complaints.	Though tourist police are deputed in various places as part of this activity, they have proved to be more tourist friendly than child friendly. They tend to pay attention to the needs of the tourists only. Immediate necessary steps should be taken by the Police Department to imbibe clarity amongst the force. Why are they employed? Why it is important to protect the rights of the children? The potential dangers that the children face from the tourists etc should be clarified.

Section	Sub - Section	Issue	Amendment introduced	What the Goa Children's Act Says	What Amendment Says	Tourism Perspective	Impacts	EQS Concerns/position
Sec 32	Sec 32 (1)	Burden of Proof shall always lie on the accused.	This has been substituted by the provision that Burden of Proof 'shall lie on the accused if the child was in his custody at the time of his arrest or at the time of committal of offence or at the time of rescue or removal of the child victim'	Burden of Proof was always with the accused thus making it utmost difficult for the accused to prove innocence. Moreover gender neutrality meant that the section was relevant to all.	The amendment diluted the stringent provision by qualifying the situations (exclusive) only when the burden of proof shall lie with the accused and not always.	Case studies prove that in most cases the tourists exploit the children and leave for other destinations. Years later when the case surfaces none of the situations qualified by the amendment remains. Moreover since in most of these cases tourists indulge in these activities in nexus with others and the family of the children. Thus they are never reported when committed. Hence relaxation in the burden of proof will enable the perpetrators of crime against children to go scot-free.	The amendment has reduced the scope of the law with respect to punishing the perpetrators of crime. This shift of Burden of Proof shall result in abetment of crime against children by tourists.	Why the dilution? Is the government more eager to protect the tourists than the rights of the children? The Amendment will have impact on the prosecution of the guilty.

WHO IS RESPONSIBLE FOR WHAT

Chief Secretary means the Chief secretary to the Government of Goa

Competent authority means the Secretary to the Government in charge of the Department of Women and Child Development

Director means the Director of the Directorate of Women and Child Development

Secretary means the Secretary to the Government in charge of the DWCD

Special officer means officer that are appointed as such under the provisions of this Act

Industry	Government				Civil Society	Local Bodies	State information Department	Media
	Tourism Department	DWCD	District Police/Airport authority/Border Police/ Railway Police/Traffic police	State commission for children				
To come out with Child Friendly Tourism Code for Goa collaborating with Tourism Department	Should evolve a Child Friendly Tourism Code for Goa collaborating with TTAG, under Section 8 (22)	To appoint special officer in each taluk to monitor the implementation of the plan of action to eliminate child labour under section 7(8)	Should report any suspected case of trafficking of children or an adult travelling with or keeping a child under suspicious circumstances to the nearest police station under Section 8 (15)	Preparing and implementing a systematic plan for spreading awareness amongst different groups, mobilization action and dialogue within civil society on child rights - Sec 13(b)	Awareness campaign to public about this act - Sec 13 (11)	Setting up of village child committee at each village panchayat for preparing a plan of action to eliminate child illiteracy, child prostitution, child labour	May set up a state council comprising persons from the media	Public awareness on the issue through Doordarshan, the print media, radio, private television channels and cable networks and all other forms of media

Industry	Government				Civil Society	Local Bodies	State information Department	Media
	Tourism Department	DWCD	District Police/Airport authority/Border Police/ Railway Police/Traffic police	State commission for children				
Hotels, or other establishments which provide boarding or lodging or any similar facility shall ensure that children are safe and not at risk of child abuse within their premises including all adjoining beaches, parks etc. if they have access from such establishment. Any violations should be reported to Police or Competent Authority.		For the implementation of the Act DWCD is responsible	The police department shall formulate an exclusive Child Code including issues of child friendly police stations, interaction and behaviour with children, mandatory sensitization programmes, etc - Sec 13(14)	Develop a capacity development strategy for the progressive implementation of child rights, training of teachers, police, judiciary and prosecution - Section 13 ©	Media Adocracy taken up with NGO's, Women's groups and other to create public awareness on the issues involved	4 or more child committees in each Municipal/Corporation areas- Sec 13(9)		

Industry	Government				Civil Society	Local Bodies	State information Department	Media
	Tourism Department	DWCD	District Police/Airport authority/Border Police/ Railway Police/Traffic police	State commission for children				
Industry is responsible to see that no child is allowed to enter any room of any hotel or establishment which provides boarding or lodging or any similar facility unless the child is registered as staying with family, relatives or person related by blood				To create a child friendly society - Sec 13 (a)				

Industry	Government				Civil Society	Local Bodies	State information Department	Media
	Tourism Department	DWCD	District Police/Airport authority/Border Police/ Railway Police/Traffic police	State commission for children				
It is the responsibility of the Hotel or other establishment to ensure that no child has access to any internet facilities which are not fitted with filters and to any objectionable materials including the rough film or videos, disc-players, cable or any other medium provided by that establishment				Review all State Legislations, rules, Orders, Notifications, Schemes and all other provisions pertaining to children and recommend necessary amendments therein, to ensure that the Rights of the child are protected- Sec 13(d)				
				To monitor the implementation of the Convention on the Rights of the Child				
				Undertake and promote research in the field of child rights- Sec13 (i)				

EQUATIONS

Established in 1985, EQUATIONS is an advocacy and campaigning organisation charged with the vision of democratizing tourism in India.

We believe that alternatives to the current models of mass tourism are viable and we have demonstrated this in innovative partnerships that place local communities' needs and rights at the centre of decision-making and benefits of tourism development.

We build networks of people - grassroots organisations, local communities, panchayats and local self governance bodies, activists, researchers, trade unions, legal and policy experts - who are concerned, as we are, with ensuring that tourism planning, policy and implementation is equitable, people-centered and just.

We interface and advocate with policy making, policy influencing and policy implementing bodies - the government, the judiciary and industry to influence tourism development that is participatory, sustainable, accountable and non-exploitative.

In the last two decades, our work has focused on the impacts arising out of unregulated and irresponsible tourism development in India and the developing world. We do this through research, information analysis and dissemination, campaigns, advocacy and lobbying. We actively support communities and local groups in their efforts to change the paradigm of unjust and unsustainable tourism development.

EQUATIONS work on the Child and Tourism

Alarmed at the growing links between tourism and the abuse of children - in the forms of child labour, commercial sexual exploitation of children and trafficking, we actively work with local communities, concerned groups, government agencies, the tourism industry and other players to devise strategies to ensure that tourism is not based on the exploitation of children.



EQUATIONS-Equitable Tourism Options

#415,2C-Cross,

4th Main,OMBR layout

Banaswadi

Bangalore-560043

Ph: +91-80-25457607/25457659

Fax: +91-80-25457665

Email: info@equitabletourism.org

Url: www.equitabletourism.org